INTERNAL REVENUE TITLE

Subtitle A—Income Taxes

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 2107, 3402, 3502, 3507, 4911, 6011, 6012, 6013, 6039B, 6164, 6201, 6211, 6212, 6213, 6214, 6315, 6420, 6421, 6424, 6427, 6501, 6511, 6601, 6611, 6653, 6694, 6695, 6696, 6905, 7463, 7701 of this title; title 31 section 757c; title 45 section 231m; title 48 section 1421i; title 50 App. section 2017e.

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter		Sec.*
U.	General stock ownership plans.....	1391

AMENDMENTS

1978—Pub. L. 95-600, title VI, § 601(c)(1), Nov. 6, 1978, 92 Stat. 2897, added subchapter U.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1501, 3402, 6013, 6017A, 6038, 6096, 6103, 6161, 6166, 6166A, 6167, 6201, 6211, 6361, 6362, 6428, 6654, 6655, 6683, 7216, 7654, 7701 of this title; title 7 sections 1926, 1929a; title 12 section 3018; title 22 section 277d-23; title 25 section 1486; title 30 section 1141; title 42 sections 291j-7, 300e-7, 300q-2, 411, 1382, 1440, 5308, 5919; title 45 section 602; title 46 section 1177; title 48 section 1574b.

Subchapter A—Determination of Tax Liability

PART I—TAX ON INDIVIDUALS

§ 1. Tax imposed

(a) Married individuals filing joint returns and surviving spouses

There is hereby imposed on the taxable income of—

(1) every married individual (as defined in section 143) who makes a single return jointly with his spouse under section 6013, and

(2) every surviving spouse (as defined in section 2(a)), a tax determined in accordance with the following table:

If taxable income is:	*The tax is:*
Not over $3,400.....	No Tax.
Over $3,400 but not over $5,500.	14% of excess over $3,400.
Over $5,500 but not over $7,600.	$294, plus 16% of excess over $5,500.
Over $7,600 but not over $11,900.	$630, plus 18% of excess over $7,600.
Over $11,900 but not over $16,000.	$1,404, plus 21% of excess over $11,900.
Over $16,000 but not over $20,200.	$2,265, plus 24% of excess over $16,000.
Over $20,200 but not over $24,600.	$3,273, plus 28% of excess over $20,200.
Over $24,600 but not over $29,900.	$4,505, plus 32% of excess over $24,600.
Over $29,900 but not over $35,200.	$6,201, plus 37% of excess over $29,900.
Over $35,200 but not over $45,800.	$8,162, plus 43% of excess over $35,200.
Over $45,800 but not over $60,000.	$12,720, plus 49% of excess over $45,800.
Over $60,000 but not over $85,600.	$19,678, plus 54% of excess over $60,000.
Over $85,600 but not over $109,400.	$33,502, plus 59% of excess over $85,600.
Over $109,400 but not over $162,400.	$47,544, plus 64% of excess over $109,400.
Over $162,400 but not over $215,400.	$81,464, plus 68% of excess over $162,400.
Over $215,400	$117,504, plus 70% of excess over $215,400.

(b) Heads of households

There is hereby imposed on the taxable income of every individual who is the head of a household (as defined in section 2(b)) a tax determined in accordance with the following table:

If taxable income is:	*The tax is:*
Not over $2,300.....	No tax.
Over $2,300 but not over $4,400.	14% of excess over $2,300.
Over $4,400 but not over $6,500.	$294, plus 16% of excess over $4,400.
Over $6,500 but not over $8,700.	$630, plus 18% of excess over $6,500.
Over $8,700 but not over $11,800.	$1,026, plus 22% of excess over $8,700.
Over $11,800 but not over $15,000.	$1,708, plus 24% of excess over $11,800.
Over $15,000 but not over $18,200.	$2,476, plus 26% of excess over $15,000.
Over $18,200 but not over $23,500.	$3,308, plus 31% of excess over $18,200.
Over $23,500 but not over $28,800.	$4,951, plus 36% of excess over $23,500.
Over $28,800 but not over $34,100.	$6,859, plus 42% of excess over $28,800.
Over $34,100 but not over $44,700.	$9,085, plus 46% of excess over $34,100.
Over $44,700 but not over $60,600.	$13,961, plus 54% of excess over $44,700.
Over $60,600 but not over $81,800.	$22,547, plus 59% of excess over $60,600.

*Section number editorially supplied for convenience of users.

If taxable income is:	*The tax is:*
Over $81,800 but not over $108,300.	$35,055, plus 63% of excess over $81,800.
Over $108,300 but not over $161,300..	$51,750, plus 68% of excess over $108,300.
Over $161,300	$87,790, plus 70% of excess over $161,300.

(c) Unmarried individuals (other than surviving spouses and heads of households)

There is hereby imposed on the taxable income of every individual (other than a surviving spouse as defined in section 2(a) or the head of a household as defined in section 2(b)) who is not a married individual (as defined in section 143) a tax determined in accordance with the following table:

If taxable income is:	*The tax is:*
Not over $2,300.....	No tax.
Over $2,300 but not over $3,400.	14% of excess over $2,300.
Over $3,400 but not over $4,400.	$154, plus 16% of excess over $3,400.
Over $4,400 but not over $6,500.	$314, plus 18% of excess over $4,400.
Over $6,500 but not over $8,500.	$692, plus 19% of excess over $6,500.
Over $8,500 but not over $10,800.	$1,072, plus 21% of excess over $8,500.
Over $10,800 but not over $12,900.	$1,555, plus 24% of excess over $10,800.
Over $12,900 but not over $15,000.	$2,059, plus 26% of excess over $12,900.
Over $15,000 but not over $18,200.	$2,605, plus 30% of excess over $15,000.
Over $18,200 but not over $23,500.	$3,565, plus 34% of excess over $18,200.
Over $23,500 but not over $28,800.	$5,367, plus 39% of excess over $23,500.
Over $28,800 but not over $34,100.	$7,434, plus 44% of excess over $28,800.
Over $34,100 but not over $41,500.	$9,766, plus 49% of excess over $34,100.
Over $41,500 but not over $55,300.	$13,392, plus 55% of excess over $41,500.
Over $55,300 but not over $81,800.	$20,982, plus 63% of excess over $55,300.
Over $81,800 but not over $108,300.	$37,677, plus 68% of excess over $81,800.
Over $108,300	$55,697, plus 70% of excess over $108,300.

(d) Married individuals filing separate returns

There is hereby imposed on the taxable income of every married individual (as defined in section 143) who does not make a single return jointly with his spouse under section 6013 a tax determined in accordance with the following table:

If taxable income is:	*The tax is:*
Not over $1,700.....	No tax.
Over $1,700 but not over $2,750.	14% of excess over $1,700.
Over $2,750 but not over $3,800.	$147, plus 16% of excess over $2,750.
Over $3,800 but not over $5,950.	$315, plus 18% of excess over $3,800.
Over $5,950 but not over $8,000.	$702, plus 21% of excess over $5,950.
Over $8,000 but not over $10,100.	$1,132.50, plus 24% of excess over $8,000.
Over $10,100 but not over $12,300.	$1,636.50, plus 28% of excess over $10,100.
Over $12,300 but not over $14,950.	$2,252.50, plus 32% of excess over $12,300.
Over $14,950 but not over $17,600.	$3,100.50, plus 37% of excess over $14,950.
Over $17,600 but not over $22,900.	$4,081, plus 43% of excess over $17,600.
Over $22,900 but not over $30,000.	$6,360, plus 49% of excess over $22,900.
Over $30,000 but not over $42,800.	$9,839, plus 54% of excess over $30,000.
Over $42,800 but not over $54,700.	$16,751, plus 59% of excess over $42,800.
Over $54,700 but not over $81,200.	$23,772, plus 64% of excess over $54,700.
Over $81,200 but not over $107,700.	$40,732, plus 68% of excess over $81,200.
Over $107,700	$58,752, plus 70% of excess over $107,700.

(e) Estates and trusts

There is hereby imposed on the taxable income of every estate and trust taxable under this subsection a tax determined in accordance with the following table:

If taxable income is:	*The tax is:*
Not over $1,050.....	14% of taxable income.
Over $1,050 but not over $2,100.	$147, plus 16% of excess over $1,050.
Over $2,100 but not over $4,250.	$315, plus 18% of excess over $2,100.
Over $4,250 but not over $6,300.	$702, plus 21% of excess over $4,250.
Over $6,300 but not over $8,400.	$1,132.50, plus 24% of excess over $6,300.
Over $8,400 but not over $10,600.	$1,636.50, plus 28% of excess over $8,400.
Over $10,600 but not over $13,250.	$2,252.50, plus 32% of excess over $10,600.
Over $13,250 but not over $15,900.	$3,100.50, plus 37% of excess over $13,250.
Over $15,900 but not over $21,200.	$4,081, plus 43% of excess over $15,900.
Over $21,200 but not over $28,300.	$6,360, plus 49% of excess over $21,200.
Over $28,300 but not over $41,100.	$9,839, plus 54% of excess over $28,300.
Over $41,100 but not over $53,000.	$16,751, plus 59% of excess over $41,100.
Over $53,000 but not over $79,500.	$23,772, plus 64% of excess over $53,000.
Over $79,500 but not over $106,000.	$40,732, plus 68% of excess over $79,500.
Over $106,000	$58,752, plus 70% of excess over $106,000.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(a), 91 Stat. 127; Nov. 6, 1978, Pub. L. 95-600, title I, § 101(a), 92 Stat. 2767.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 generally made a downward revision of the tax rate for married individuals filing joint returns and surviving spouses resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of

$3,400 or less was substituted for a bottom bracket imposing no tax on taxable income of $3,200 or less.

Subsec. (b). Pub. L. 95-600 generally made a downward revision of the tax table for heads of household resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,300 or less was substituted for a bottom bracket imposing no tax on taxable income of $2,200 or less.

Subsec. (c). Pub. L. 95-600 generally made a downward revision of the tax table for unmarried individuals other than surviving spouses and heads of households resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,300 or less was substituted for a bottom bracket imposing no tax on taxable income of $2,200 or less.

Subsec. (d). Pub. L. 95-600 generally made a downward revision of the tax tables for married individuals filing separate returns resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $1,700 or less was substituted for a bottom bracket imposing no tax on taxable income of $1,600 or less.

Subsec. (e). Pub. L. 95-600 generally made a downward revision of the tax tables for estates and trusts resulting in a table under which, among other changes, a bottom bracket under which a tax of 14% is imposed on taxable income of $1,050 for a bottom bracket under which a tax of 14% was imposed on taxable income of $500 or less.

1977—Subsec. (a). Pub. L. 95-30 generally made a downward revision of the tax table for married individuals filing joint returns and surviving spouses resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $3,200 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $1,000 or less.

Subsec. (b). Pub. L. 95-30 generally made a downward revision of the tax table for heads of households resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,200 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $1,000 or less.

Subsec. (c). Pub. L. 95-30 generally made a downward revision of the tax table for unmarried individuals other than surviving spouses and heads of households resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $2,200 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $500 or less.

Subsec. (d). Pub. L. 95-30 generally made a downward revision of the tax table for married individuals filing separate returns resulting in a table under which, among other changes, a bottom bracket imposing no tax on taxable income of $1,600 or less was substituted for a bottom bracket under which a tax of 14% had been imposed on a taxable income of $500 or less. Provisions making the table applicable to estates and trusts were stricken. See subsec. (e).

Subsec. (e). Pub. L. 95-30 added subsec. (e) consisting of the table formerly contained in subsec. (d) but without any downward revision and limited so as to apply only to estates and trusts.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(f)(1) of Pub. L. 95-600 provided that: "The amendments made by subsections (a), (b), (c), and (d) [amending sections 63(d), 402(e)(1)(C), 1302(b)(3), and 6012(a)(1) of this title] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106(a) of Pub. L. 95-30 provided that: "The amendments made by sections 101, 102, and 104 [amending sections 1, 3, 21, 42, 57, 63, 143, 161, 172, 211, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 6012, 6014, 6212, 6504, and 6654 of this title and repealing sections 36, 141, 142, 144, and 145 of this title] shall apply to taxable years beginning after December 31, 1976."

SHORT TITLE OF 1978 AMENDMENTS

Section 1(a) of Pub. L. 95-618, Nov. 9, 1978, 92 Stat. 3174, provided that: "This Act [which enacted sections 44C, 124, and 4064 of this title, amended sections 39, 46 to 48, 56, 57, 167, 263, 465, 613, 613A, 614, 751, 1016, 1254, 4041, 4063, 4081, 4092, 4093, 4217, 4221, 4222, 4293, 4483, 6096, 6401, 6412, 6416, 6421, 6424, 6427, 6504, and 6675 of this title, redesignated section 124 of this title as section 125, enacted provisions set out as notes under sections 39, 44C, 48, 124, 167, 263, 613, 613A, 4041, 4063, 4064, 4081, 4093, and 4221 of this title, and amended provisions set out as notes under section 57 of this title and section 120 of Title 23, Highways] may be cited as the 'Energy Tax Act of 1978'."

Pub. L. 95-615, § 1, Nov. 8, 1978, 92 Stat. 3097, provided that: "This Act [(probably should read "Title I", comprising sections 1 to 8 of Pub. L. 95-615) which amended section 167 of this title, enacted provisions set out as notes under sections 61, 62, and 911 of this title, and amended provisions set out as notes under sections 117, 167, 382, 401, and 911 of this title] may be cited as the 'Tax Treatment Extension Act of 1977'."

Pub. L. 95-615, § 201(a), Nov. 8, 1978, 92 Stat. 3098, provided that: "This Act [(probably should read "title II" comprising sections 201 to 210 of Pub. L. 95-615) which enacted section 913 of this title, amended sections 43, 62, 119, 217, 911, 1034, 1302, 1304, 1402, 3401, 6011, 6012, and 6091 of this title, and enacted provisions set out as notes under sections 61, 401, and 911 of this title] may be cited as the 'Foreign Earned Income Act of 1978'."

Section 1(a) of Pub. L. 95-600 provided that: "This Act [which amended this title generally] may be cited as the 'Revenue Act of 1978'."

Pub. L. 95-227, § 1, Feb. 10, 1978, 92 Stat. 11, provided that: "This Act [enacting sections 192, 4121, and 4951 to 4953 of this title and section 934a of Title 30, Mineral Lands and Mining, amended sections 501, 4218, 4221, 4293, 4946, 6104, 6213, 6405, 6416, 6501, 6503, and 7454 of this title and section 934 of Title 30 and enacted provisions set out as notes under sections 192 and 4121 of this title and section 934 of Title 30] may be cited as the 'Black Lung Benefits Revenue Act of 1977'."

Pub. L. 95-502, title II, § 201, Oct. 21, 1978, 92 Stat. 1696, provided that: "This title [which enacted section 4042 of this title and sections 1801 to 1804 of Title 33, Navigation and Navigable Waters, amended section 4293 of this title, and enacted provisions set out as notes under section 4042 of this title] may be cited as the 'Inland Waterways Revenue Act of 1978'."

SHORT TITLE OF 1977 AMENDMENTS

Section 1(a) of Pub. L. 95-30 provided that: "This Act [enacting sections 44B, 51 to 53, and 280C of this title and sections 661, 662, and 6736 of Title 42, The Public Health and Welfare, amending sections 1, 3, 11, 21, 42, 56, 57, 63, 143, 161, 170, 172, 188, 211, 280A, 381, 383, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 821, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 3402, 6012, 6014, 6096, 6212, 6411, 6501, 6504, 6511, 6601, 6611, and 6654 of this title, section 5520 of Title 5, Government Organization and Employees, sections 1673 and 1675 of Title 15, Commerce and Trade, and sections 652, 654, 658, 659, 6722, 6723, 6727, 6735, 6736 of Title 42, repealing sections 36, 141, 142, 144, and 145 of this title and section 6736 of Title 42, enacting provisions set out as notes under sections 1, 37, 44B, 57, 105, 170, 188, 280A, 383, 3402, 6601, 6654, and 7651 of this title, section 5520 of Title 5, section 1673 of Title 15, and sections 402, 602, 652, 654, 658, and 6721 of Title 42, and amending provisions set out as notes

under sections 42, 43, 105, 162, 447 and 911 of this title] may be cited as the 'Tax Reduction and Simplification Act of 1977'."

POLICY WITH RESPECT TO ADDITIONAL TAX REDUCTIONS

Section 3 of Pub. L. 95-600 provided that: "As a matter of national policy the rate of growth in Federal outlays, adjusted for inflation, should not exceed 1 percent per year between fiscal year 1979 and fiscal year 1983; Federal outlays as a percentage of gross national product should decline to below 21 percent in fiscal year 1980, 20.5 percent in fiscal year 1981, 20 percent in fiscal year 1982 and 19.5 percent in fiscal year 1983; and the Federal budget should be balanced in fiscal years 1982 and 1983. If these conditions are met, it is the intention that the tax-writing committees of Congress will report legislation providing significant tax reductions for individuals to the extent that these tax reductions are justified in the light of prevailing and expected economic conditions."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 3, 42, 402, 511, 641, 871, 876, 877, 891, 962, 1348, 6014, 6361 of this title.

§ 2. Definitions and special rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 43, 63, 1302, 1304, 3402, 6012, 6013, 6015 of this title; title 38 section 503.

§ 3. Tax tables for individuals

(a) Imposition of tax table tax

(1) In general

In lieu of the tax imposed by section 1, there is hereby imposed for each taxable year on the tax table income of every individual whose tax table income for such year does not exceed the ceiling amount, a tax determined under tables, applicable to such taxable year, which shall be prescribed by the Secretary. In the tables so prescribed, the amounts of tax shall be computed on the basis of the rates prescribed by section 1.

(2) Ceiling amount defined

For purposes of paragraph (1), the term "ceiling amount" means, with respect to any taxpayer, the amount (not less than $20,000) determined by the Secretary for the tax rate category in which such taxpayer falls.

(3) Certain taxpayers with large number of exemptions

The Secretary may exclude from the application of this section taxpayers in any tax rate category having more than the number of exemptions for that category determined by the Secretary.

(4) Tax table income defined

For purposes of this section, the term "tax table income" means adjusted gross income—

(A) reduced by the excess itemized deductions, and

(B) increased (in the case of an individual to whom section 63(e) applies) by the unused zero bracket amount.

(b) Section inapplicable to certain individuals

This section shall not apply to—

(1) an individual to whom—

(A) section 911 (relating to earned income from sources without the United States),

(B) section 1301 (relating to income averaging), or

(C) section 1348 (relating to maximum rate on personal service income),

applies for the taxable year,

(2) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in annual accounting period, and

(3) an estate or trust.

(c) Tax treated as imposed by section 1

For purposes of this title, the tax imposed by this section shall be treated as tax imposed by section 1.

(d) Taxable income

Whenever it is necessary to determine the taxable income of an individual to whom this section applies, the taxable income shall be determined under section 63.

(e) Cross reference

For computation of tax by Secretary, see section 6014.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(b), 91 Stat. 131; Nov. 6, 1978, Pub. L. 95-600, title IV, § 401(b)(1), 92 Stat. 2867.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600 struck out subpar. (B), which related to the alternative capital gains tax under section 1201 of this title, and redesignated former subpars. (C) and (D) as (B) and (C), respectively.

1977—Subsec. (a). Pub. L. 95-30 designated existing provisions as par. (1), substituted "tax table income" for "taxable income" and "does not exceed the ceiling amount" for "does not exceed $20,000" in par. (1) as so designated, and added pars. (2), (3), and (4).

Subsec. (b). Pub. L. 95-30 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95-30 redesignated former subsec. (b) as (c).

Subsecs. (d), (e). Pub. L. 95-30 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1)(B)-(D) of this section by section 401(b)(1) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1201 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 891 of this title.

§ 5. Cross references relating to tax on individuals

(a) Other rates of tax on individuals, etc.

(1) For rates of tax on nonresident aliens, see section 871.

(2) For doubling of tax on citizens of certain foreign countries, see section 891.

(3) For rate of withholding in the case of nonresident aliens, see section 1441.

(4) For minimum tax for taxpayers other than corporations, see section 55.

[*See main edition for text of (b)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title IV, §§ 401(b)(2), 421(e)(1), 92 Stat. 2867, 2875.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-600, § 401(b)(2), redesignated former subsec. (a)(4) as (a)(3). Former subsec. (a)(3), relating to the alternative tax in the case of capital gains, was struck out.

Subsec. (a)(4). Pub. L. 95-600, §§ 401(b)(2), 421(e)(1), redesignated former subsec. (a)(5) as (a)(4) and, as so redesignated, substituted "taxpayers other than corporations, see section 55" for "preferences, see section 56". Former subsec. (a)(4) redesignated (a)(3).

Subsec. (a)(5). Pub. L. 95-600, § 401(b)(2), redesignated subsec. (a)(5) as (a)(4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(3) to (5) of this section by section 401(b)(2) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1201 of this title.

Amendment of subsec. (a)(4) of this section by section 421(e)(1) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

PART II—TAX ON CORPORATIONS

§ 11. Tax imposed

(a) Corporations in general

A tax is hereby imposed for each taxable year on the taxable income of every corporation.

(b) Amount of tax

The amount of the tax imposed by subsection (a) shall be the sum of—

(1) 17 percent of so much of the taxable income as does not exceed $25,000;

(2) 20 percent of so much of the taxable income as exceeds $25,000 but does not exceed $50,000;

(3) 30 percent of so much of the taxable income as exceeds $50,000 but does not exceed $75,000;

(4) 40 percent of so much of the taxable income as exceeds $75,000 but does not exceed $100,000; plus

(5) 46 percent of so much of the taxable income as exceeds $100,000.

(c) Exceptions

Subsection (a) shall not apply to a corporation subject to a tax imposed by—

(1) section 594 (relating to mutual savings banks conducting life insurance business),

(2) subchapter L (sec. 801 and following, relating to insurance companies), or

(3) subchapter M (sec. 851 and following, relating to regulated investment companies and real estate investment trusts).

(d) Foreign corporations

In the case of a foreign corporation, the tax imposed by subsection (a) shall apply only as provided by section 882.

(As amended May 23, 1977, Pub. L. 95-30, title II, § 201(1), (2), 91 Stat. 141; Nov. 6, 1978, Pub. L. 95-600, title III, § 301(a), 92 Stat. 2820.)

AMENDMENTS

1978—Pub. L. 95-600 reduced corporate tax rates by substituting provisions imposing a five-step tax rate structure on corporate taxable income for provisions using a normal tax and surtax approach to the taxation of corporate taxable income.

1977—Subsec. (b)(1). Pub. L. 95-30, § 201(1), substituted "December 31, 1978" for "December 31, 1977".

Subsec. (b)(2). Pub. L. 95-30, § 201(1), substituted "January 1, 1979" for "January 1, 1978" in the provisions preceding subpar. (A).

Subsec. (d)(1). Pub. L. 95-30, § 201(2), substituted "December 31, 1978" for "December 31, 1977".

Subsec. (d)(2). Pub. L. 95-30, § 201(2), substituted "January 1, 1979" for "January 1, 1978".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 301(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending sections 11, 12(7), 57(a)(9)(B), 244(a)(2)(B), 247(a)(2)(B), 511(a)(1), (2), 527(b)(1), 528(b)(1), 802(a)(1), 821(a), (c)(1), 826(c)(1), 852(b)(1), 857(b)(1), 882(a)(1), 907(a)(2), 922(a)(2)(B), 962(c), 1351(d)(4), 1551(a), 1561(a), (a)(1), (b)(1), 6154(c) and 6655(e) of this title] shall apply to taxable years beginning after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 57, 80, 244, 511, 527, 528, 594, 802, 804, 821, 826, 831, 852, 857, 882, 891, 904, 907, 922, 941, 962, 1201, 1351, 1378, 1381, 1551, 1561, 4942, 6154, 6425, 6655 of this title.

§ 12. Cross references relating to tax on corporations

[*See main edition for text of (1) to (6)*]

(7) For limitation on benefits of graduated rate schedule provided in section 11(b), see section 1551.

(8) For minimum tax for tax preferences, see section 56.

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(1), 92 Stat. 2820.)

AMENDMENTS

1978—Par. (7). Pub. L. 95-600 substituted "benefits of graduated rate schedule provided in section 11(b)" for "the $25,000 exemption from surtax provided in section 11(c)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of par. (7) of this section by section 301(b)(1) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

PART III—CHANGES IN RATES DURING A TAXABLE YEAR

§ 21. Effect of changes

[*See main edition for text of (a) to (c)*]

(d) Change in surtax exemption

In applying subsection (a) to a taxable year of a taxpayer which is not a calendar year, the change made by section 303(b) of the Tax Reduction Act of 1975 in the surtax exemption and any change under section 11(d) in the surtax exemption shall be treated as a change in a rate of tax.

(e) Changes made by Tax Reduction and Simplification Act of 1977

In applying subsection (a) to a taxable year of an individual which is not a calendar year, the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 shall not be treated as changes in a rate of tax.

(f) Changes made by Revenue Act of 1978

In applying subsection (a) to a taxable year which is not a calendar year—

(1) the amendments made by sections 101, 102, and 301 of the Revenue Act of 1978 (and no other amendments made by such Act), and

(2) the expiration of section 42 (relating to general tax credit),

shall be treated as a change in a rate of tax.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(2), 91 Stat. 133; Nov. 6, 1978, Pub. L. 95-600, title I, § 106, 92 Stat. 2776.)

REFERENCES IN TEXT

The Tax Reduction Act of 1975, referred to in subsec. (d), is Pub. L. 94-12, § 303(b), Mar. 29, 1975, 89 Stat. 26. Section 303(b) of such Act amended section 11(d) of this title. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

The Tax Reduction and Simplification Act of 1977, referred to in subsec. (e), is Pub. L. 95-30, May 23, 1977, 91 Stat. 126. Sections 101 and 102 of such Act amended sections 1, 3, 21, 42, 57, 63, 143, 161, 172, 211, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 6014, 6212, 6504, and 6654 of this title and repealed sections 36, 141, 142, 144, and 145 of this title. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 1 of this title and Tables.

The Revenue Act of 1978 and such Act, referred to in subsec. (f)(1), is Pub. L. 95-600, Nov. 6, 1978, 92 Stat. 2763. Section 101 of the Revenue Act of 1978 amended sections 1, 63, 402, 1302, 3402, and 6012 of this title and enacted provisions set out as notes under sections 1 and 3402 of this title. Section 102 of the Revenue Act of 1978 amended sections 151, 3402, 6012, and 6013 of this title and enacted provisions set out as notes under sections 151 and 3402 of this title. Section 301 of the Revenue Act of 1978 amended sections 11, 12, 57, 244, 247, 511, 527, 528, 802, 821, 826, 852, 857, 882, 907, 922, 962, 1351, 1551, 1561, 6154, and 6655 of this title and enacted provisions set out as a note under section 11 of this title. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-600 added subsec. (f).

1977—Subsec. (d). Pub. L. 95-30, § 101(d)(2)(A), (B), redesignated former subsec. (f) as (d). Former subsec. (d), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Tax Reform Act of 1969 in part I or in the application of part IV or V of subchapter B for purposes of the determination of taxable income should be treated as a change in a rate of tax, was stricken.

Subsec. (e). Pub. L. 95-30, § 101(d)(2)(A), (C), added subsec. (e). Former subsec. (e), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Revenue Act of 1971 in section 141 (relating to the standard deduction) and section 151 (relating to personal exemptions) should be treated as a change in a rate of tax, was stricken.

Subsec. (f). Pub. L. 95-30, § 101(d)(2)(B), redesignated subsec. (f) as (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

PART IV—CREDITS AGAINST TAX

Subpart
D. Rules for computing credit for employment of certain new employees.

SUBPART A—CREDITS ALLOWABLE

Sec.
[36. Repealed.]
44B. Credit for employment of certain new employees.
44C. Residential energy credit.

AMENDMENTS

1978—Pub. L. 95-618, title I, § 101(b)(1), Nov. 9, 1978, 92 Stat. 3179, added item 44C.

1977—Pub. L. 95-30, title I, § 101(e)(1), title II, § 202(d)(1), May 23, 1977, 91 Stat. 134, 147, added subpart D and section 44B and struck out item 36 "Credit not allowed to individuals taking standard deduction".

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 47, 55, 56, 665, 6401 of this title.

§ 31. Tax withheld on wages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44C, 55, 56, 874, 6211, 6362, 6401, 6413, 6513, 6654 of this title.

§ 32. Tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 874, 882, 6211, 6401 of this title.

§ 33. Taxes on foreign countries and possessions of the United States; possession tax credit

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 42, 44, 44A, 46, 50A, 53, 55, 56, 691, 1351, 6096, 6428 of this title.

[§ 36. Repealed. Pub. L. 95-30, title I, § 101(d)(3), May 23, 1977, 91 Stat. 133]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 15; Oct. 4, 1976, Pub. L. 94-455, title V, § 501(b)(2), title X, § 1011(c), title XIX, § 1901(b)(1)(A), 90 Stat. 1558, 1611, 1790, directed that the credits provided by section 32 not be allowed if an individual elects under section 144 to take the standard deduction.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 37. Credit for the elderly

[See main edition for text of (a) to (d)]

(e) Election of prior law with respect to public retirement system income

[See main edition for text of (1)]

(2) One spouse age 65 or over

In the case of a married individual who has not attained age 65 before the close of the taxable year (and whose gross income includes income described in paragraph (4)(B)) but whose spouse has attained such age, this paragraph shall apply for the taxable year

only if both spouses elect, at such time and in such manner as the Secretary shall by regulations prescribe, to have this paragraph apply. If this paragraph applies for the taxable year, the credit (if any) of each spouse under this section shall be determined under this subsection.

[*See main edition for text of (3)*]

(4) Retirement income

For purposes of this subsection, the term "retirement income" means—

[*See main edition for text of (A)*]

(B) in the case of an individual who has not attained age 65 before the close of the taxable year and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services), income from pensions and annuities under a public retirement system (as defined in paragraph (9)(A)),

to the extent included in gross income without reference to this subsection, but only to the extent such income does not represent compensation for personal services rendered during the taxable year.

(5) Limitation on retirement income

For purposes of this subsection, the amount of retirement income shall not exceed $2,500 less—

(A) the reduction provided by subsection (b)(3), and

(B) in the case of any individual who has not attained age 72 before the close of the taxable year—

(i) if such individual has not attained age 62 before the close of the taxable year, any amount of earned income (as defined in paragraph (9)(B)) in excess of $900 received by such individual in the taxable year, or

[*See main edition for text of (ii), (6) and (7)*]

(8) Community property laws not applicable

In the case of a joint return, this subsection shall be applied without regard to community property laws.

(9) Definitions

For purposes of this subsection—

(A) Public retirement system defined

The term "public retirement system" means a pension, annuity, retirement, or similar fund or system established by the United States, a State, a possession of the United States, any political subdivision of any of the foregoing, or the District of Columbia.

(B) Earned income

The term "earned income" has the meaning assigned to such term by section 911(b), except that such term does not include any amount received as a pension or annuity.

[*See main edition for text of (f)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(a)(1)-(3), 92 Stat. 2897.)

CODIFICATION

The amendments by section 701(a)(3) of Pub. L. 95-600 have been executed to subsec. (e) of this section as the probable intent of Congress, notwithstanding the directory language of section 701(a)(3) of Pub. L. 95-600 that the amendments be executed to subsec. (c) of this section.

Section 1901(c)(1) of Pub. L. 94-455 purported to amend subsec. (f) of this section by striking out "a Territory". The amendment could not be executed in view of the prior general amendment of this section by section 503(a) of Pub. L. 94-455. Section 1901(c)(1) was repealed by section 703(j)(11) of Pub. L. 95-600, title VII, Nov. 6, 1978, 92 Stat. 2941.

AMENDMENTS

1978—Subsec. (e)(2). Pub. L. 95-600, § 701(a)(1), inserted "(and whose gross income includes income described in paragraph (4)(B))" following "who has not attained age 65 before the close of the taxable year".

Subsec. (e)(4)(B). Pub. L. 95-600, § 701(a)(2), (3)(B), inserted "and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)" following "before the close of the taxable year" and substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(5)(B). Pub. L. 95-600, § 701(a)(3)(C), substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(8). Pub. L. 95-600, § 701(a)(3)(A), added subsec. (e)(8). Former subsec. (e)(8) redesignated (e)(9).

Subsec. (e)(9). Pub. L. 95-600, § 701(a)(3)(A), redesignated subsec. (e)(8) as (e)(9).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(a)(4) of Pub. L. 95-600 provided that:

"(A) The amendments made by paragraphs (1) and (2) [amending subsec. (e)(2) and (4)(B) of this section] shall apply to taxable years beginning after December 31, 1975.

"(B) The amendments made by paragraph (3) [amending subsec. (e)(4)(B), (5)(B), (8), and (9) of this section] shall apply to taxable years beginning after December 31, 1977."

DETERMINATION OF RETIREMENT INCOME CREDIT UNDER PROVISIONS AS THEY EXISTED PRIOR TO AMENDMENT BY PUB. L. 94-455 ELECTION

Pub. L. 95-30, title IV, § 403, May 23, 1977, 91 Stat. 155, provided that: "A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to determine the amount of his credit under section 37 of the Internal Revenue Code of 1954 for his first taxable year beginning in 1976 under the provisions of such section as they existed before the amendment made by section 503 of the Tax Reform Act of 1976 [Pub. L. 94-455]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 42, 44, 44A, 46, 50A, 53, 904, 1375, 6014, 6096, 6428 of this title.

§ 38. Investment in certain depreciable property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 42, 44, 44A, 46, 47, 48, 50A, 53, 55, 56, 167, 185, 381, 861, 1351, 6096, 6428 of this title.

§ 39. Certain uses of gasoline, special fuels, and lubricating oil

(a) General rule

There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

[*See main edition for text of (1) and (2)*]

(3) under section 6424 with respect to lubricating oil used during the taxable year for certain nontaxable purposes (determined without regard to section 6424(f)), and

(4) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(h)).

(b) Exception

Credit shall not be allowed under subsection (a) for any amount payable under section 6421, 6424, or 6427, if a claim for such amount is timely filed and, under section 6421(i), 6424(f), or 6427(h), is payable under such section.

(As amended Pub. L. 95-599, title V, § 505(c)(1), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95-618, title II, § 233(b)(2)(C), Nov. 9, 1978, 92 Stat. 3191.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-618 substituted "for certain nontaxable purposes" for "otherwise than in a highway motor vehicle".

Subsec. (a)(4). Pub. L. 95-599 substituted "6427(h)" for "6427(g)".

Subsec. (b). Pub. L. 95-599 substituted "6427(h)" for "6427(g)".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 233(d) of Pub. L. 95-618 provided that: "The amendments made by this section [amending sections 39, 4041, 4221, 4483, 6416, 6421, 6424, 6427, 6504, and 6675 of this title and amending a provision set out as a note under section 120 of Title 23, Highways] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Nov. 9, 1978]."

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as an Effective Date of 1978 Amendment note under section 6427 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44C, 46, 55, 56, 874, 882, 1378, 6201, 6211, 6213, 6362, 6401, 6420, 6421, 6424, 6427 of this title; title 49 section 4742.

§ 40. Expenses of work incentive programs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 44, 44A, 50A, 50B, 51, 53, 55, 56, 280C, 381, 6096, 6428 of this title.

§ 41. Contributions to candidates for public office

[*See main edition for text of (a)*]

(b) Limitations

(1) Maximum credit

The credit allowed by subsection (a) for a taxable year shall not exceed $50 ($100 in the case of a joint return under section 6013).

[*See main edition for text of (2) and (3); (c) and (d)*]

(As amended Pub. L. 95-600, title I, § 113(c), Nov. 6, 1978, 92 Stat. 2778.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600 substituted "$50" and "$100" for "$25" and "$50", respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 113(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsec. (b)(1) of this section and section 642 (i) to (k) of this title and repealing section 218 of this title] shall apply with respect to contributions the payment of which is made after December 31, 1978, in taxable years beginning after such date".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42, 44, 44A, 50A, 53, 527, 642, 6096, 6428 of this title.

§ 42. General tax credit

(a) Allowance of credit

In the case of an individual, there shall be allowed as a credit against the tax imposed by section 1, or against the tax imposed in lieu of the tax imposed by section 1, for the taxable year an amount equal to the greater of—

(1) 2 percent of so much of the taxpayer's taxable income for the taxable year (reduced by the zero bracket amount) as does not exceed $9,000; or

(2) $35 multiplied by each exemption for which the taxpayer is entitled to a deduction for the taxable year under section 151.

(b) Application with other credits

The credit allowed by subsection (a) shall not exceed the amount of the tax imposed by section 1, or the amount of the tax imposed in lieu of the tax imposed by section 1, for the taxable year. In determining the credits allowed under—

(1) section 33 (relating to foreign tax credit),

(2) section 37 (relating to credit for the elderly credit),

(3) section 38 (relating to investment in certain depreciable property),

(4) section 40 (relating to expenses of work incentive programs), and

(5) section 41 (relating to contributions to candidates for public office),

the tax imposed by this chapter shall (before any other reductions) be reduced by the credit allowed by this section.

(c) Special rule for married individuals filing separate returns

(1) In general

In the case of a married individual who files a separate return for the taxable year, the amount of the credit allowable under subsection (a) for the taxable year shall be the amount determined under paragraph (2) of subsection (a).

(2) Marital status

For purposes of this subsection, the determination of marital status shall be made under section 143.

[*See main edition for text of (d)*]

(e) Income tax tables to reflect credit

The tables prescribed by the Secretary under section 3 shall reflect the credit allowed by this section.

(As amended Pub. L. 95-30, title I, § 101(c), May 23, 1977, 91 Stat. 132.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-30, § 101(c)(1), substituted "tax imposed by section 1, or against the tax imposed in lieu of the tax imposed by section 1," for "tax imposed by this chapter" in the provisions preceding par. (1), added "(reduced by the zero bracket amount)" in par. (1), and substituted "under section 151" for "under subsection (b) or (e) of section 151" in par. (2).

Subsec. (b). Pub. L. 95-30, § 101(c)(4), substituted "by section 1, or the amount of the tax imposed in lieu of the tax imposed by section 1," for "by this chapter" in the provisions preceding par. (1).

Subsec. (c). Pub. L. 95-30, § 101(c)(3), struck out, in par. (1), "Notwithstanding subsection (a)," preceding "In the case of a married individual", and "equal to either (A) the amount determined under paragraph (1) of subsection (a); or (B) if this subparagraph applies to the individual for the taxable year," preceding "the amount determined under paragraph (2) of subsection (a)" and struck out provision that, for purposes of the deleted provisions, paragraph (1) of subsection (a) would be applied by substituting "$4,500" for "$9,000", redesignated former par. (3) as (2), and deleted former par. (2) under which special provisions had been made for the election by the taxpayer to have former subpar. (B) of par. (1) apply.

Subsec. (e). Pub. L. 95-30, § 101(c)(2), added subsec. (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Section 401(e) of Pub. L. 94-455, as amended by Pub. L. 95-30, title I, § 103(c), May 23, 1977, 91 Stat. 139; Pub. L. 95-600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by subsection (a) [amending subsecs. (a) and (c)(1) of this section and section 6096(b) of this title] shall apply to taxable years ending after December 31, 1975, and shall cease to apply to taxable years ending after December 31, 1978. The amendments made by subsection (c) [amending section 43(a) to (c)(1)(A) of this title] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (b) [to sections 141(b), (c) and 6012(a) of this title] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (d) [to section 3402(a), (c), (m) of this title] shall apply to wages paid after September 14, 1976."

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Section 3(b) of Pub. L. 94-164, as amended by Pub. L. 94-455, title IV, § 401(a)(1), Oct. 4, 1976, 90 Stat. 1555; Pub. L. 95-30, title I, § 103(a), May 23, 1977, 91 Stat. 139, provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1975. Such amendments shall cease to apply to taxable years ending after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 44, 44A, 53, 6096, 6153 of this title.

§ 43. Earned income

(a) Allowance of credit

In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 10 percent of so much of the earned income for the taxable year as does not exceed $5,000.

(b) Limitation

The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) $500, over

(2) 12.5 percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $6,000.

(c) Definitions

For purposes of this section—

(1) Eligible individual

(A) In general

The term "eligible individual" means an individual who, for the taxable year—

(i) is married (within the meaning of section 143) and is entitled to a deduction under section 151 for a child (within the meaning of section 151(e)(3)),

(ii) is a surviving spouse (as determined under section 2(a)), or

(iii) is a head of a household (as determined under subsection (b) of section 2 without regard to subparagraphs (A)(ii) and (B) of paragraph (1) of such subsection).

(B) Child must reside with taxpayer in the United States

An individual shall be treated as satisfying clause (i) of subparagraph (A) only if the child has the same principal place of abode as the individual and such abode is in the United States. An individual shall be treated as satisfying clause (ii) or (iii) of subparagraph (A) only if the household in question is in the United States.

(C) Individual entitled to exclude income under section 911 not eligible individual

The term "eligible individual" does not include an individual who, for the taxable year, is entitled to exclude any amount from gross income under section 911 (relating to earned income by employees in certain camps) or section 931 (relating to income from sources within the possessions of the United States).

(2) Earned income

[*See main edition for text of (A)*]

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account, and

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

[*See main edition for text of (d) and (e)*]

(f) Amount of credit to be determined under tables

(1) In general

The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables

The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and $10,000, and

(B) for adjusted gross income between $6,000 and $10,000.

(h)[1] Coordination with advance payments of earned income credit

(1) Recapture of excess advance payments

If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Reconciliation of payments advanced and credit allowed

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

(As amended Pub. L. 95-600, title I, §§ 104(a)–(e), 105(a), Nov. 6, 1978, 92 Stat. 2772, 2773; Pub. L. 95-615, title II, § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100.)

CODIFICATION

Amendment by section 202(f)(5) of Pub. L. 95-615, which directed that subsec. (c)(1)(B) of this section be amended was executed to subsec. (c)(1)(C) of this section as the probable intent of Congress in view of the prior general amendment of subsec. (c)(1) of this section by section 104(e) of Pub. L. 95-600 which enacted the provisions formerly contained in subsec. (c)(1)(B) in subsec. (c)(1)(C) of this section.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 104(a), substituted "subtitle" for "chapter" and "$5,000" for "$4,000".

Subsec. (b). Pub. L. 95-600, § 104(b), substituted provision limiting the allowable credit to an amount not to exceed the excess of $500 over 12.5 percent of so much of the adjusted gross income for the taxable year as exceeds $6,000 for provision limiting the allowable credit to an amount reduced by 10 percent of so much of the adjusted gross income for the taxable year as exceeds $4,000.

Subsec. (c)(1). Pub. L. 95-600, § 104(e), substituted in definition of eligible individual one who is married and is entitled to a deduction under section 151 for a child, provided the child has the same principal abode as the individual and the abode is in the United States, is a surviving spouse, or is a head of household, provided the household is in the United States for one who maintains a household in the United States which is the principal abode of that individual and a child of that individual who meets the requirements of section 151(e)(1)(B) or a child of that individual who is disabled within the meaning of section 72(m)(7) and to whom the individual is entitled to claim a deduction under section 151.

Subsec. (c)(1)(C). Pub. L. 95-615, § 202(f)(5), substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)".

Subsec. (c)(2)(B). Pub. L. 95-600, § 104(d), redesignated former cls. (ii) to (iv) as cls. (i) to (iii), respectively. Former cl. (i), which provided that amounts be taken into account only if includible in the gross income of the taxpayer for the taxable year, was struck out.

Subsec. (f). Pub. L. 95-600, § 104(c), added subsec. (f).

Subsec. (h). Pub. L. 95-600, § 105(a), added subsec. (h).

EFFECTIVE DATES OF 1978 AMENDMENT

Section 104(f) of Pub. L. 95-600 provided that: "The amendments made by this section [adding subsec. (f) and amending subsecs. (a), (b), and (c)(1), (2)(i) to (iv) of this section] shall apply to taxable years beginning after December 31, 1978."

Section 105(g)(1) of Pub. L. 95-600 provided that: "The amendments made by subsections (a) and (d) [adding subsec. (h) of this section and amending section 6012(a)(8) of this title] shall apply to taxable years beginning after December 31, 1978."

Section 105(g)(3) of Pub. L. 95-600 provided that: "Subsection (f) [amending a provision set out as a note below] shall take effect on the date of enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as a note under section 911 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to taxable years ending after Dec. 31, 1975, see section 401(e) of Pub. L. 94-455, set out as an Effective and Termination Dates of 1976 Amendment note under section 42 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 209(b) of Pub. L. 94-12, as amended by Pub. L. 94-164, § 2(f), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94-455, title IV, § 401(c)(1)(A), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95-30, title I, § 103(b), May 23, 1977, 91 Stat. 139; Pub. L. 95-600, title I, § 103(a), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by section 204 [enacting this section and amending sections 6201 and 6401 of this title] shall apply to taxable years beginning after December 31, 1974."

DISREGARD OF REFUND FOR DETERMINATION OF ELIGIBILITY FOR FEDERAL BENEFITS OR ASSISTANCE

Section 2(d) of Pub. L. 94-164 as amended by Pub. L. 94-455, § 402(a), Oct. 4, 1976, 90 Stat. 1558; Pub. L. 95-600, title I, § 105(f), Nov. 6, 1978, 92 Stat. 2776, provided that: "Any refund of Federal income taxes made to any individual by reason of section 43 of the Internal Revenue Code of 1954 (relating to earned income credit), and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall not be taken into account in any year ending before 1980 as income or receipts for purposes of determining the eligibility, for the month in which such refund is made or any month thereafter of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds, but only if such individual (or the family unit of which he is a member) is a recipient of benefits or assistance under such a program for the month before the month in which such refund is made."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44C, 55, 56, 3507, 6153, 6201, 6401 of this title.

[1] So in original. No subsec. (g) has been enacted.

§ 44. Purchase of new principal residence

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44A, 6096 of this title.

§ 44A. Expenses for household and dependent care services necessary for gainful employment

[See main edition for text of (a) to (e)]

(f) Special rules

For purposes of this section—

[See main edition for text of (1) to (5)]

(6) Payments to related individuals

No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 151(e)(3)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

[See main edition for text of (7) and (8); (g)]

(As amended Pub. L. 95-600, title I, § 121(a), Nov. 6, 1978, 92 Stat. 2779.)

AMENDMENTS

1978—Subsec. (f)(6). Pub. L. 95-600 substituted provision disallowing a credit for any amount paid by a taxpayer to an individual with respect to whom, for the taxable year, a deduction under section 151(e) is allowable either to the taxpayer or his spouse or who is a child of the taxpayer who has not attained the age of 19 at the close of the taxpayer year and defining "taxpayer year" for provision disallowing a credit for any amount paid by the taxpayer to an individual bearing a relationship described in section 152(a)(1) through (8), or a dependent described in section 152(a)(9), except that a credit was allowed for an amount paid by a taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service was performed, neither the taxpayer nor his spouse was entitled to a deduction under section 151(e), provided the service constituted employment within the meaning of section 3121(b).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 121(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (f)(6) of this section] shall apply to taxable years beginning after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 50A, 53, 913, 6096 of this title.

§ 44B. Credit for employment of certain new employees

(a) General rule

At the election at [1] the taxpayer, there shall be allowed as a credit against the tax imposed by this chapter the amount determined under subpart D of this part.

(b) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section and subpart D.

(c) Election

(1) Time for making election

An election under subsection (a) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(2) Manner of making election

Any election under subsection (a) (or revocation thereof) shall be made in such manner as the Secretary may be[1] regulations prescribe.

(Added Pub. L. 95-30, title II, § 202(a), May 23, 1977, 91 Stat. 141, and amended Pub. L. 95-600, title III, § 321(b)(1), Nov. 6, 1978, 92 Stat. 2835.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 321(b)(1)(A), added provisions relating to an election by the taxpayer.

Subsec. (c). Pub. L. 95-600, § 321(b)(1)(B), added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) and (c) of this section by section 321(b)(1)(A), (B) of Pub. L. 95-600 applicable to amounts paid or incurred after Dec. 31, 1978, in taxable years ending after such date, see section 321(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 51 of this title.

EFFECTIVE DATE

Section 202(e) of Pub. L. 95-30 provided that: "The amendments made by this section [enacting sections 44B, 51, 52, 53, and 280C of this title and amending sections 56, 381, 383, 6096, 6411, 6501, 6511, 6601, and 6611 of this title] shall apply to taxable years beginning after December 31, 1976, and to credit carrybacks from such years."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 52, 53, 55, 56, 280C, 381, 6096, 6501 of this title.

§ 44C. Residential energy credit

(a) General rule

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the qualified energy conservation expenditures, plus

(2) the qualified renewable energy source expenditures.

(b) Qualified expenditures

For purposes of subsection (a)—

(1) Energy conservation

In the case of any dwelling unit, the qualified energy conservation expenditures are 15

[1] So in original. Probably should be "of".

[1] So in original. Probably should be "by".

percent of so much of the energy conservation expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.

(2) Renewable energy source

In the case of any dwelling unit, the qualified renewable energy source expenditures are the following percentages of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit:

(A) 30 percent of so much of such expenditures as does not exceed $2,000, plus

(B) 20 percent of so much of such expenditures as exceeds $2,000 but does not exceed $10,000.

(3) Prior expenditures by taxpayer on same residence taken into account

If for any prior year a credit was allowed to the taxpayer under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1) or (2) (whichever is appropriate) shall be applied for the taxable year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

(4) Minimum dollar amount

No credit shall be allowed under this section with respect to any return for any taxable year if the amount which would (but for this paragraph) be allowed with respect to such return is less than $10.

(5) Application with other credits

The credit allowed by subsection (a) shall not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43.

(6) Carryover of unused credit

(A) In general

If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by paragraph (5) for such taxable year, such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) No carryover to taxable years beginning after December 31, 1987

No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987.

(c) Definitions and special rules

For purposes of this section—

(1) Energy conservation expenditures

The term "energy conservation expenditure" means an expenditure made on or after April 20, 1977, by the taxpayer for insulation or any other energy-conserving component (or for the original installation of such insulation or other component) installed in or on a dwelling unit—

(A) which is located in the United States,

(B) which is used by the taxpayer as his principal residence, and

(C) the construction of which was substantially completed before April 20, 1977.

(2) Renewable energy source expenditure

(A) In general

The term "renewable energy source expenditure" means an expenditure made on or after April 20, 1977, by the taxpayer for renewable energy source property installed in connection with a dwelling unit—

(i) which is located in the United States, and

(ii) which is used by the taxpayer as his principal residence.

(B) Certain labor costs included

The term "renewable energy source expenditure" includes expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of renewable energy source property.

(C) Swimming pool, etc., used as storage medium

The term "renewable energy source expenditure" does not include any expenditure properly allocable to a swimming pool used as an energy storage medium or to any other energy storage medium which has a primary function other than the function of such storage.

(3) Insulation

The term "insulation" means any item—

(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water heater) the heat loss or gain of such dwelling (or water heater),

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the item.

(4) Other energy-conserving component

The term "other energy-conserving component" means any item (other than insulation)—

(A) which is—

(i) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(ii) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

(iii) an electrical or mechanical furnace ignition system, which replaces a gas pilot light,

(iv) a storm or thermal window or door for the exterior of the dwelling,

(v) an automatic energy-saving setback thermostat,

(vi) caulking or weatherstripping of an exterior door or window,

(vii) a meter which displays the cost of energy usage, or

(viii) an item of the kind which the Secretary specifies by regulations as increasing the energy efficiency of the dwelling,

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the item.

(5) Renewable energy source property

The term "renewable energy source property" means property—

(A) which, when installed in connection with a dwelling, transmits or uses—

(i) solar energy, energy derived from the geothermal deposits (as defined in section 613(e)(3)), or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water for use within such dwelling, or

(ii) wind energy for nonbusiness residential purposes,

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 5 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the property.

(6) Regulations

(A) Criteria; certification procedures

The Secretary shall by regulations—

(i) establish the criteria which are to be used in (I) prescribing performance and quality standards under paragraphs (3), (4), and (5), or (II) specifying any item under paragraph (4)(A)(viii) or any form of renewable energy under paragraph (5)(A)(i), and

(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this section, as insulation, an energy-conserving component, or renewable energy source property.

(B) Consultation

Performance and quality standards regulations and other regulations shall be prescribed by the Secretary under paragraphs (3), (4), and (5) and under this paragraph only after consultation with the Secretary of Energy, the Secretary of Housing and Urban Development, and other appropriate Federal officers.

(7) When expenditures made; amount of expenditures

(A) In general

Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when original installation of the item is completed.

(B) Renewable energy source expenditures

In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling, such expenditures shall be treated as made when the original use of the constructed or reconstructed dwelling by the taxpayer begins.

(C) Amount

The amount of any expenditure shall be the cost thereof.

(D) Allocation in certain cases

If less than 80 percent of the use of an item is for nonbusiness residential purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness residential purposes shall be taken into account. For purposes of this subparagraph, use for a swimming pool shall be treated as use which is not for residential purposes.

(8) Principal residence

The determination of whether or not a dwelling unit is a taxpayer's principal residence shall be made under principles similar to those applicable to section 1034, except that—

(A) no ownership requirement shall be imposed, and

(B) the period for which a dwelling is treated as the principal residence of the taxpayer shall include the 30-day period ending on the first day on which it would (but for this subparagraph) be treated as his principal residence.

(d) Special rules

For purposes of this section—

(1) Dollar amounts in case of joint occupancy

In the case of any dwelling unit which is jointly occupied and used during any calendar year as a principal residence by 2 or more individuals—

(A) the amount of the credit allowable under subsection (a) by reason of energy conservation expenditures or by reason of renewable energy source expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as one taxpayer whose taxable year is such calendar year; and

(B) there shall be allowable with respect to such expenditures to each of such individuals a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

(2) Tenant-stockholder in cooperative housing corporation

In the case of an individual who is a tenant-stockholder (as defined in section 216) in a co-

operative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(3) Condominiums

(A) In general

In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

(B) Condominium management association

For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(4) 1977 expenditures allowed for 1978

(A) No credit for taxable years beginning before 1978

No credit shall be allowed under this section for any taxable year beginning before January 1, 1978.

(B) 1977 expenditures allowed for 1978

In the case of the taxpayer's first taxable year beginning after December 31, 1977, this section shall be applied by taking into account the period beginning April 20, 1977, and ending on the last day of such first taxable year.

(e) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) Termination

This section shall not apply to expenditures made after December 31, 1985.

(Added Pub. L. 95-618, title I, § 101(a), Nov. 9, 1978, 92 Stat. 3175.)

EFFECTIVE DATE

Section 101(c) of Pub. L. 95-618 provided that: "The amendments made by this section [enacting this section and amending sections 56, 1016 and 6096 of this title] shall apply to taxable years ending on or after April 20, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 6096 of this title.

SUBPART B—RULES FOR COMPUTING CREDIT FOR INVESTMENT IN CERTAIN DEPRECIABLE PROPERTY

Sec.
[49, 50. Repealed.]

AMENDMENTS

1978—Pub. L. 95-600, title III, § 312(c)(5), Nov. 6, 1978, 92 Stat. 2826, struck out item 49 "Termination for period beginning April 19, 1969, and ending during 1971" and item 50 "Restoration of credit".

§ 46. Amount of credit

(a) General rule

[See main edition for text of (1)]

(2) Amount of credit

(A) In general

The amount of the credit determined under this paragraph for the taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

(i) the regular percentage,

(ii) in the case of energy property, the energy percentage, and

(iii) the ESOP percentage.

(B) Regular percentage

For purposes of this paragraph, the regular percentage is 10 percent.

(C) Energy percentage

For purposes of this paragraph, the energy percentage is—

(i) 10 percent with respect to the period beginning on October 1, 1978, and ending on December 31, 1982, or

(ii) zero with respect to any other period.

(D) Special rule for certain energy property

For purposes of this paragraph, the regular percentage shall not apply to any energy property which, but for section 48(*l*)(1), would not be section 38 property.

(E) ESOP percentage

For purposes of this paragraph, the ESOP percentage is—

(i) with respect to the period beginning on January 21, 1975, and ending on December 31, 1983, 1 percent, and

(ii) with respect to the period beginning on January 1, 1977, and ending on December 31, 1983, an additional percentage (not in excess of ½ of 1 percent) which results in an amount equal to the amount determined under section 48(n)(1)(B).

This subparagraph shall apply to a corporation only if it meets the requirements of section 409A and only if it elects (at such time, in such form, and in such manner as the Secretary prescribes) to have this subparagraph apply.

(3) Limitation based on amount of tax

Notwithstanding paragraph (1), the credit allowed by section 38 for the taxable year shall not exceed—

(A) so much of the liability for tax for the taxable year as does not exceed $25,000, plus

(B) the following percentage of so much of the liability for tax for the taxable year as exceeds $25,000:

If the taxable year ends in:	*The percentage is:*
1979	60
1980	70
1981	80
1982 or thereafter	90.

[See main edition for text of (4) to (6)]

(7) Alternative limitation in the case of certain utilities

(A) In general

If, for the taxable year ending in 1979—

(i) the amount of the qualified investment of the taxpayer which is attributable to public utility property is 25 percent or more of his aggregate qualified investment, and

(ii) the application of this paragraph results in a percentage higher than 60 percent,

then subparagraph (B) of paragraph (3) of this subsection shall be applied by substituting for "60 percent" the taxpayer's applicable percentage for such year.

(B) Applicable percentage

The applicable percentage for any taxpayer for any taxable year ending in 1979 is—

(i) 50 percent, plus

(ii) that portion of 20 percent which the taxpayer's amount of qualified investment which is public utility property bears to his aggregate qualified investment.

If the proportion referred to in clause (ii) is 75 percent or more, the applicable percentage of the taxpayer for the year shall be 70 percent.

(C) Public utility property defined

For purposes of this paragraph, the term "public utility property" has the meaning given to such term by the first sentence of subsection (c)(3)(B).

(8) Alternative limitation in the case of certain railroads and airlines

(A) In general

If, for a taxable year ending in 1979 or 1980—

(i) the amount of the qualified investment of the taxpayer which is attributable to railroad property or to airline property, as the case may be, is 25 percent or more of his aggregate qualified investment, and

(ii) the application of this paragraph results in a percentage higher than 60 percent (70 percent in the case of a taxable year ending in 1980),

then subparagraph (B) of paragraph (3) of this subsection shall be applied by substituting for "60 percent" ("70 percent" in the case of a taxable year ending in 1980) the taxpayer's applicable percentage for such year.

(b) Applicable percentage

The applicable percentage of any taxpayer for any taxable year under this paragraph is—

(i) 50 percent, plus

(ii) that portion of the tentative percentage for the taxable year which the taxpayer's amount of qualified investment which is railroad property or airline property (as the case may be) bears to his aggregate qualified investment.

If the proportion referred to in clause (ii) is 75 percent or more, the applicable percentage of the taxpayer for the taxable year shall be 90 percent (80 percent in the case of a taxable year ending in 1980).

(C) Tentative percentage

For purposes of subparagraph (B), the tentative percentage shall be determined under the following table:

If the taxable year ends in:	*The tentative percentage is:*
1979	40
1980	30.

(D) Railroad property defined

For purposes of this paragraph, the term "railroad property" means section 38 property used by the taxpayer directly in connection with the trade or business carried on by the taxpayer of operating a railroad (including a railroad switching or terminal company).

(E) Airline property defined

For purposes of this paragraph, the term "airline property" means section 38 property used by the taxpayer directly in connection with the trade or business carried on by the taxpayer of the furnishing or sale of transportation as a common carrier by air subject to the jurisdiction of the Civil Aeronautics Board or the Federal Aviation Administration.

[(9) Repealed. Pub. L. 95-600, title III, § 312(b)(2), Nov. 6, 1978, 92 Stat. 2825]

(10) Special rules in the case of energy property

Under regulations prescribed by the Secretary—

(A) In general

This subsection and subsection (b) shall be applied separately—

(i) first with respect to so much of the credit allowed by section 38 as is not attributable to the energy percentage,

(ii) second with respect to so much of the credit allowed by section 38 as is attributable to the application of the energy percentage to energy property (other than solar or wind energy property), and

(iii) then with respect to so much of the credit allowed by section 38 as is attributable to the application of the energy percentage to solar or wind energy property.

(B) Rules of application for energy property other than solar or wind energy property

In applying this subsection and subsection (b) for taxable years ending after September 30, 1978, with respect to so much of the credit allowed by section 38 as is described in subparagraph (A)(ii)—

(i) paragraph (3)(C) shall be applied by substituting "100 percent" for "50 percent",

(ii) paragraphs (7), (8), and (9) shall not apply, and

(iii) the liability for tax shall be the amount determined under paragraph (4)

reduced by so much of the credit allowed by section 38 as is described in subparagraph (A)(i).

(C) Refundable credit for solar or wind energy property

In the case of so much of the credit allowed by section 38 as is described in subparagraph (A)(iii)—

(i) paragraph (3) shall not apply, and

(ii) for purposes of this title (other than section 38, this subpart, and chapter 63), such credit shall be treated as if it were allowed by section 39 and not by section 38.

[See main edition for text of (b)]

(c) Qualified investment

[See main edition for text of (1) and (2)]

(3) Public utility property

(A) To the extent that the credit allowed by section 38 with respect to any public utility property is determined at the rate of 7 percent, in the case of any property which is public utility property, the amount of the qualified investment shall be ⅔ of the amount determined under paragraph (1). The preceding sentence shall not apply for purposes of applying the energy percentage.

[See main edition for text of (B), (C) and (4)]

(5) Applicable percentage in the case of certain pollution control facilities

(A) In general

Notwithstanding paragraph (2), in the case of property—

(i) with respect to which an election under section 169 applies, and

(ii) the useful life of which (determined without regard to section 169) is not less than 5 years.

100 percent shall be the applicable percentage for purposes of applying paragraph (1) with respect to so much of the adjusted basis of the property as (after the application of section 169(f)) constitutes the amortizable basis for purposes of section 169.

(B) Special rule where property is financed by industrial development bonds

To the extent that any property is financed by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, subparagraph (A) shall be applied by substituting "50 percent" for "100 percent".

(6) Special rule for commuter highway vehicles

(A) In general

Notwithstanding paragraph (2), in the case of a commuter highway vehicle the useful life of which is 3 years or more, the applicable percentage for purposes of paragraph (1) shall be 100 percent.

(B) Definition of commuter highway vehicle

For purposes of subparagraph (A), the term "commuter highway vehicle" means a highway vehicle—

(i) the seating capacity of which is at least 8 adults (not including the driver),

(ii) at least 80 percent of the mileage use of which can reasonably be expected to be (I) for purposes of transporting the taxpayer's employees between their residences and their place of employment, and (II) on trips during which the number of employees transported for such purposes is at least one-half of the adult seating capacity of such vehicle (not including the driver),

(iii) which is acquired by the taxpayer on or after the date of the enactment of the Energy Tax Act of 1978, and placed in service by the taxpayer before January 1, 1986, and

(iv) with respect to which the taxpayer makes an election under this paragraph on his return for the taxable year in which such vehicle is placed in service.

[See main edition for text of (d)]

(e) Limitations with respect to certain persons

(1) In general

In the case of—

(A) an organization to which section 593 applies, and

(B) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (sec. 851 and following),

(2) Ratable share

For purposes of paragraph (1), the ratable share of any person for any taxable year of the items described therein shall be—

(A) in the case of an organization referred to in paragraph (1)(A), 50 percent thereof, and

(B) in the case of a regulated investment company or a real estate investment trust, the ratio (i) the numerator of which is its taxable income and (ii) the denominator of which is its taxable income computed without regard to the deduction for dividends paid provided by section 852(b)(2)(D) or 857(b)(2)(B), as the case may be.

For purposes of subparagraph (B) of the preceding sentence, the term "taxable income" means in the case of a regulated investment company its investment company taxable income (within the meaning of section 852(b)(2)), and in the case of a real estate investment trust its real estate investment trust taxable income (within the meaning of section 857(b)(2)) determined without regard to any deduction for capital gains dividends (as defined in section 857(b)(3)(C)) and by excluding any net capital gain.

[See main edition for text of (3)]

(f) Limitation in case of certain regulated companies

(1) General rule

Except as otherwise provided in this subsection, no credit shall be allowed by section 38 with respect to any property which is public utility property (as defined in paragraph (5)) of the taxpayer—

[*See main edition for text of (A) and (B), concluding par.*]

(2) Special rule for ratable flow-through

If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraph (1) shall not apply, but no credit shall be allowed by section 38 with respect to any property which is public utility property (as defined in paragraph (5)) of the taxpayer—

[*See main edition for text of (A) and (B), (3) to (7)*]

(8) Prohibition of immediate flowthrough

An election made under paragraph (3) shall apply only to the amount of the credit allowable under section 38 with respect to public utility property (within the meaning of subsection (a)(7)(D)) determined as if the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Tax Act of 1978, and the Revenue Act of 1978 had not been enacted. Any taxpayer who had timely made an election under paragraph (3) may, at his own option and without regard to any requirement imposed by an agency described in subsection (c)(3)(B), elect within 90 days after the date of the enactment of the Tax Reduction Act of 1975 (in such manner as the Secretary shall prescribe) to have the provisions of paragraph (3) apply with respect to the amount of the credit allowable under section 38 with respect to such property which is in excess of the amount determined under the preceding sentence. If such taxpayer does not make such an election, paragraph (1) or (2) (whichever paragraph is applicable without regard to this paragraph) shall apply to such excess credit, except that if neither paragraph (1) nor (2) is applicable (without regard to this paragraph), paragraph (1) shall apply unless the taxpayer elects (in such manner as the Secretary shall prescribe) within 90 days after the date of the enactment of the Tax Reduction Act of 1975 to have the provisions of paragraph (2) apply. The provisions of this paragraph shall not be applied to disallow such excess credit before the first final determination which is inconsistent with such requirements is made, determined in the same manner as under paragraph (4).

[*See main edition for text of (9)*]

(g) 50 percent credit in the case of certain vessels

[*See main edition for text of (1) to (4)*]

(5) Definitions

Any term used in section 607 of the Merchant Marine Act, 1936, shall have the same meaning when used in this subsection.

[*See main edition for text of (6)*]

(h) Special rules for cooperatives

In the case of a cooperative organization described in section 1381(a)—

(1) that portion of the credit allowable to the organization under section 38 which the organization cannot use for the taxable year to which the qualified investment is attributable because of the limitation contained in subsection (a)(3) shall be allocated to the patrons of the organization,

(2) section 47 (relating to certain dispositions, etc., of section 38 property) shall be applied as if any allocated portion of the credit had been retained by the organization, and

(3) the rules necessary to carry out the purposes of this subsection shall be determined under regulations prescribed by the Secretary.

(As amended Pub. L. 95-600, title I, § 141(e), (f)(2), title III, §§ 311(a), (c), 312(a), (b), (c)(2), 313(a), 316(a), (b)(1), (2), title VII, § 703(a)(1), (2), Nov. 6, 1978, 92 Stat. 2794, 2795, 2824–2826, 2829, 2939; Pub. L. 95-618, title II, § 241(a), title III, § 301(a), (c)(1), Nov. 9, 1978, 92 Stat. 3192, 3194, 3195, 3199.)

REFERENCES IN TEXT

The date of the enactment of the Energy Tax Act of 1978, referred to in subsec. (c)(6)(B)(iii), is the date of enactment of Pub. L. 95-618 which was approved on Nov. 9, 1978.

The date of enactment of this paragraph, referred to in subsec. (f)(2), (3), is Dec. 10, 1971, the date of approval of Pub. L. 92-178, which enacted subsec. (e) of this section, later redesignated subsec. (f).

The Tax Reduction Act of 1975, referred to in subsec. (f)(8), is Pub. L. 94-12, Mar. 29, 1975, 89 Stat. 26. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1 of this title and Tables.

The Tax Reform Act of 1976, referred to in subsec. (f)(8), is Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1520. For complete classification of this Act to the Code, see Tables.

The Energy Tax Act of 1978, referred to in subsec. (f)(8), is Pub. L. 95-618, Nov. 9, 1978, 92 Stat. 3174. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 1 of this title and Tables.

The Revenue Act of 1978, referred to in subsec. (f)(8), is Pub. L. 95-600, Nov. 6, 1978, 92 Stat. 2763. For complete classification of this Act to the Code, see Tables.

Section 607 of the Merchant Marine Act, 1936, referred to in subsec. (g)(5) is section 607 of act June 29, 1936, ch. 858, 49 Stat. 2005, which is classified to section 1177 of Title 46, Shipping.

CODIFICATION

Pub. L. 95-600, § 703(j)(9), substituted "section (a)(4)" for "section (a)(3)" in the directory language of section 1901(b)(1)(C) of Pub. L. 94-455 purporting to amend subsec. (a)(3), which amendment had already been editorially executed to subsec. (a)(4) as the probable intent of Congress in view of the redesignation of subsec. (a)(3) as (a)(4) by Pub. L. 94-455, § 802(a)(1).

Amendments to subsecs. (a)(2)(B), (c)(3)(A), and (f)(8) made by section 311(a), (c) of P.L. 95-600 and by section 301(a) of Pub. L. 95-618, were executed to text as if Pub. L. 95-618 had been enacted immediately prior to Pub. L. 95-600 to reflect congressional intent. H.R. 5263 (Energy Tax Act of 1978) and H.R. 13511 (Revenue Act of 1978) which were enacted by Congress on Oct. 15, 1978, were approved by the President in inverse order.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-618, § 301(a)(1), among other changes, added provisions relating to an alternative energy property tax credit which would pay for a certain percentage of the cost of equipment which uses sources of energy other than oil and gas

and of associated pollution control, handling, and preparation equipment. See Codification note above.

Subsec. (a)(2)(B). Pub. L. 95-600, § 311(a), made 10 percent limitation on investment tax credit permanent. See Codification note above.

Subsec. (a)(2)(E). Pub. L. 95-600, § 141(e), (f)(2), substituted "December 31, 1983" for "and ending on December 31, 1980" wherever appearing, "section 48(n)(1)(B)" for "section 301(e) of the Tax Reduction Act of 1975" and "section 409A" for "section 301(d) of the Tax Reduction Act of 1975".

Subsec. (a)(3). Pub. L. 95-600, § 312(a), increased the present 50 percent tax liability limitation to 90 percent, to be phased in at an additional 10 percentage points per year beginning with taxable years which end in 1979.

Subsec. (a)(7). Pub. L. 95-600, § 312(b)(1), in subpar. (A) substituted "the taxable year ending in 1979" for "a taxable year ending after calendar year 1974 and before calendar year 1981", "subparagraph (B)" for "subparagraph (C)", and "for '60 percent' the taxpayer's" for "for 50 percent his" and inserted "the application of this paragraph results in a percentage higher than 60 percent," preceding "then subparagraph (B)"; in subpar. (B) substituted "70 percent" for "50 percent plus the tentative percentage for such year"; struck out former subpar. (C), which related to the determination of the tentative percentage, and redesignated former subpar. (D) as (C).

Subsec. (a)(8). Pub. L. 95-600, § 312(b)(2), in subpar. (A) substituted "the taxable year ending in 1979" for "a taxable year ending after calendar year 1976, and before calendar year 1983", "subparagraph (B)" for "subparagraph (C)", and "for '60 percent' ('70 percent' in the case of a taxable year ending in 1980) the taxpayer's" for "for 50 percent his" and inserted reference to airline property and "the application of this paragraph results in a percentage higher than 60 percent (70 percent in the case of a taxable year ending in 1980)," preceding "then subparagraph (B)"; in subpar. (B) inserted reference to airline property and substituted "90 percent (80 percent in the case of a taxable year ending in 1980)" for "50 percent plus the tentative percentage for such year"; in subpar. (C) table struck out tentative percentage of 50 for 1977 or 1978, 20 for 1981, and 10 for 1982; and added subpar. (E).

Subsec. (a)(9). Pub. L. 95-600, § 312(b)(2), struck out subsec. (a)(9), which related to the alternative limitation in the case of certain airlines.

Subsec. (a)(10). Pub. L. 95-618, § 301(c)(1), added subsec. (a)(10).

Subsec. (c)(3)(A). Pub. L. 95-618, § 301(a)(2)(A), substituted "For the period beginning on January 1, 1981, in the case of any property" for "To the extent that subsection (a)(2)(C) applies to property" and added provisions that the preceding sentence not apply for purposes of applying the energy percentage. See Codification note above.

Pub. L. 95-600, § 311(c)(1), substituted "To the extent that the credit allowed by section 38 with respect to any public utility property is determined at the rate of 7 percent" for "For the period beginning on January 1, 1981". See Codification note above.

Subsec. (c)(5). Pub. L. 95-600, § 313(a), increased the investment credit available to pollution control facilities which a taxpayer has elected to amortize over a five-year period to a full investment credit from a one-half investment credit.

Subsec. (c)(6). Pub. L. 95-618, § 241(a), added subsec. (c)(6).

Subsec. (e)(1). Pub. L. 95-600, § 316(b)(1), struck out subpar. (C), which related to a cooperative organization described in section 1381(a).

Subsec. (e)(2). Pub. L. 95-600, § 316(b)(2), struck out subpar. (C), which related to a cooperative organization.

Subsec. (f)(1), (2). Pub. L. 95-600, § 312(c)(2), struck out "described in section 50" following "with respect to any property".

Subsec. (f)(8). Pub. L. 95-618, § 301(a)(2)(B), substituted ", the Tax Reform Act of 1976, and the Energy Tax Act of 1978" for "and the Tax Reform Act of 1976". See Codification note above.

Pub. L. 95-600, §§ 311(c)(2), 703(a)(1), substituted "subsection (a)(7)(D)" for "subsection (a)(6)(D)" and inserted reference to the Revenue Act of 1978. See Codification note above.

Subsec. (g)(5). Pub. L. 95-600, § 703(a)(2), substituted "Merchant Marine Act, 1936" for "Merchant Marine Act, 1970".

Subsec. (h). Pub. L. 95-600, § 316(a), added subsec. (h).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2)(E) of this section by section 141(e) and (f)(2) of Pub. L. 95-600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409A of this title.

Section 312(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (a)(3), (7), (8), (9), (f)(1), (2) of this section and sections 48(a)(7)(A), (B), (h), (i), (j) and 167(i) of this title and repealing sections 49 and 50 of this title] shall apply to taxable years ending after December 31, 1978."

Section 313(b) of Pub. L. 95-600 provided that:

"The amendment made by subsection (a) [amending subsec. (c)(5) of this section] shall apply to—

"(1) property acquired by the taxpayer after December 31, 1978, and

"(2) property the construction, reconstruction, or erection of which was completed by the taxpayer after December 31, 1978 (but only to the extent of the basis thereof attributable to construction, reconstruction, or erection after such date)."

Section 316(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (e)(1)(A) to (C), (e)(2)(A) to (C), (h) of this section and section 1388(j) of this title] shall apply to taxable years ending after October 31, 1978."

Section 703(c)(5) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending sections 219(c)(4) and 220(b)(1)(A), (4) of this title] shall apply to taxable years beginning after December 31, 1976."

Section 703(r) of Pub. L. 95-600 provided that: "Except as otherwise provided, the amendments made by this section [amending subsecs. (a)(4), (f)(8), (g)(5) of this section and sections 48(d)(1)(B), (d)(4)(D), 103(b)(1), (c)(1), (c)(2)(A), (c)(5), (d), (d)(5), 447(a), (g)(2), 453(c)(3), 501(c)(20), (h), 801(g)(1)(B)(ii), (g)(7), 911(c)(7), 995(b)(1), (b)(1)(G), 996(a)(2), 999(c)(1), (c)(2), 1033(a)(2)(A)(ii), 1212(a)(1)(C)(ii), 1375(a)(2), 1402(a), (c)(6), 1561(b)(3), 4041(h)(2), (j), 4911(c)(2), 6104(a)(2), 6427(d), 6501(h), (j), (o), 6511(d)(2), 7609(c)(1) of this title and sections 402(v), 405(p)(3), 410(a)(6)(B)(v), 411(a)(2), (c)(6) of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 103, 311, 443, 501, and 4973 of this title, and amending provisions set out as notes under section 120, 311, 907, 995, 2011, 2501, and 4940 of this title] shall take effect on October 4, 1976."

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

PLAN REQUIREMENTS FOR TAXPAYERS ELECTING ADDITIONAL CREDITS

Section 301(d), (e), (f) of Pub. L. 94-12, as amended by Pub. L. 94-455, §§ 802(b)(7), 803(c), (d), (e), relating to plan requirements for taxpayers electing additional credit, was repealed by Pub. L. 95-600, title I, § 141(f)(1), Nov. 6, 1978, 92 Stat. 2795.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 48, 50B, 52, 55, 56, 124, 383, 401, 1388, 6401, 6411 of this title.

§ 47. Certain dispositions, etc., of section 38 property

(a) General rule

Under regulations prescribed by the Secretary—

[*See main edition for text of (1) to (3)*]

(4) Special rules for commuter highway vehicles

(A) Useful life

For purposes of this subsection, 3 years shall be treated as the useful life which was taken into account in computing the credit under section 38 with respect to any commuter highway vehicle (as defined in section 46(c)(6)(B)).

(B) Change in use

If less than 80 percent of the mileage use of any commuter highway vehicle by the taxpayer during that portion of any taxable year which is within the first 36 months of the operation of such vehicle by the taxpayer meets the requirements of section 46(c)(6)(B), then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in the credits allowed under section 38 for all prior taxable years which would have resulted solely from treating such vehicle, for purposes of determining qualified investment, as not being a commuter highway vehicle. If the application of this subparagraph to any property is followed by the application of paragraph (1) to such property, proper adjustment shall be made in applying paragraph (1).

(5) Carrybacks and carryovers adjusted

In the case of any cessation described in paragraph (1) or (3) or any change in use described in paragraph (2) or (4), the carrybacks and carryovers under section 46(b) shall be adjusted by reason of such cessation (or change in use).

(6) Aircraft used outside the United States after April 18, 1969

[*See main edition for text of (A)*]

(B) Computation of qualified investment

If an aircraft described in subparagraph (A) is disposed of or otherwise ceases to be section 38 property, the increase under paragraph (1) and the adjustment under paragraph (5) shall not be greater than the increase or adjustment which would result if the qualified investment of such aircraft were based upon a useful life equal to the lesser of (i) the actual useful life of such aircraft with respect to the taxpayer, or (ii) twice the number of full calendar months during which such aircraft was registered by the Administrator of the Federal Aviation Agency and was used in the United States, operated to and from the United States, or operated under contract with the United States. For purposes of the preceding sentence, an aircraft shall be treated as used in the United States for any calendar month beginning after such aircraft was placed in service, if such month is included in a taxable year ending before January 1, 1971, for which such aircraft was section 38 property (determined without regard to this paragraph).

[*See main edition for text of (C) and (7)*]

(b) Section not to apply in certain cases

Subsection (a) shall not apply to—

(1) a transfer by reason of death,

(2) a transaction to which section 381(a) applies, or

(3) a transfer to which subsection (c) of section 374 (relating to exchanges under the final system plan for ConRail) applies.

For purposes of subsection (a), property shall not be treated as ceasing to be section 38 property with respect to the taxpayer by reason of a mere change in the form of conducting the trade or business so long as the property is retained in such trade or business as section 38 property and the taxpayer retains a substantial interest in such trade or business.

[*See main edition for text of (c)*]

(As amended Pub. L. 95-600, title III, § 317(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 95-618, title II, § 241(b), Nov. 9, 1978, 92 Stat. 3193.)

AMENDMENTS

1978—Subsec. (a)(4). Pub. L. 95-618, § 241(b)(1), added subsec. (a)(4). Former subsec. (a)(4) redesignated (a)(5).

Subsec. (a)(5). Pub. L. 95-618, § 241(b)(1), redesignated former subsec. (a)(4) as (a)(5) and, as so redesignated, substituted "paragraph (2) or (4)" for "paragraph (2)".

Subsec. (a)(6)(B). Pub. L. 95-618, § 241(b)(3), substituted "paragraph (5)" for "paragraph (4)".

Subsec. (b). Pub. L. 95-600, § 317(a), added par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 317(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (b)(1) to (3) of this section] shall apply to taxable years ending after March 31, 1976."

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 1393 of this title.

§ 48. Definitions; special rules

(a) Section 38 property

(1) In general

Except as provided in this subsection, the term "section 38 property" means—

(A) tangible personal property (other than an air conditioning or heating unit), or

[*See main edition for text of (B)*]

(C) elevators and escalators, but only if—

(i) the construction, reconstruction, or erection of the elevator or escalator is completed by the taxpayer after June 30, 1963, or

(ii) the elevator or escalator is acquired after June 30, 1963, and the original use of such elevator or escalator commences with the taxpayer and commences after such date, or

(D) single purpose agricultural or horticultural structures; or

(E) in the case of a qualified rehabilitated building, that portion of the basis which is attributable to qualified rehabilitation expenditures (within the meaning of subsection (g)).

Such term includes only property with respect to which depreciation (or amortization in lieu of depreciation) is allowable and having a useful life (determined as of the time such property is placed in service) of 3 years or more.

(2) Property used outside the United States

[See main edition for text of (A)]

(B) Exceptions

Subparagraph (A) shall not apply to—

[See main edition for text of (i)]

(ii) rolling stock, of a domestic railroad corporation providing transportation subject to subchapter I of chapter 105 of title 49, which is used within and without the United States;

[See main edition for text of (iii) to (x), concluding par.; (3) to (6)]

(7) Property completed abroad or predominantly of foreign origin

(A) In general

Property shall not be treated as section 38 property if—

[See main edition for text of (i), (ii), and concluding par.]

(B) Period of application of paragraph

Except as provided in subparagraph (D), subparagraph (A) shall apply only with respect to property—

[See main edition for text of (i), (ii), (C) and (D)]

(8) Amortized property

Any property with respect to which an election under section 167(k), 184, 188, or 191 applies shall not be treated as section 38 property.

[See main edition for text of (9)]

(10) Boilers fueled by oil or gas

(A) In general

The term "section 38 property" does not include any boiler primarily fueled by petroleum or petroleum products (including natural gas) unless the use of coal is precluded by Federal air pollution regulations (or by State air pollution regulations in effect on October 1, 1978) or unless the use of such boiler will be an exempt use within the meaning of subparagraph (B).

(B) Exempt use defined

For purposes of subparagraph (A), the term "exempt use" means—

(i) use in an apartment, hotel, motel, or other residential facility,

(ii) use in a vehicle, aircraft, or vessel, or in transportation by pipeline,

(iii) use on a farm for farming purposes (within the meaning of section 6420(c)),

(iv) use in—

(I) a shopping center,

(II) an office building,

(III) a wholesale or retail establishment,

(IV) any other facility which is not an integral part of manufacturing, processing, or mining, or

(V) any facility for the production of electric power having a heat rate of less than 9,500 Btu's per kilowatt hour and which is capable of converting to synthetic fuels (as certified by the Secretary),

(v) use in the exploration for, or the development, extraction, transmission, or storage of, crude oil, natural gas, or natural gas liquids, and

"(vi) use in Hawaii.

Except as provided in clauses (iv) (V) and (vi) of the preceding sentence, the term "exempt use" does not include use of a boiler which is public utility property (within the meaning of section 46(f)(51)).[1]

[See main edition for text of (b) and (c)]

(d) Certain leased property

(1) General rule

A person (other than a person referred to in section 46(e)(1)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in paragraph (4)) to treat the lessee as having acquired such property for an amount equal to—

[See main edition for text of (A)]

(B) if the property is leased by a corporation which is a component member of a controlled group (within the meaning of section 46(a)(6)) to another corporation which is a component member of the same controlled group, the basis of such property to the lessor.

[See main edition for text of (2) and (3)]

(4) Property to which paragraph (2) applies

Paragraph (2) shall apply only to property which—

[See main edition for text of (A) to (C)]

(D) is not leased subject to a net lease (within the meaning of sectin 57(c)(1)(B)).

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[1] So in original. Probably should be "section 46(f)(5)".

[*See main edition for text of (e) and (f)*]

(g) Special rules for qualified rehabilitated buildings

For purposes of this subpart—

(1) Qualified rehabilitated building defined

(A) In general

The term "qualified rehabilitated building" means any building (and its structural components)—

(i) which has been rehabilitated,

(ii) which was placed in service before the beginning of the rehabilitation, and

(iii) 75 percent or more of the existing external walls of which are retained in place as external walls in the rehabilitation process.

(B) 20 years must have elapsed since construction or prior rehabilitation

A building shall not be a qualified rehabilitated building unless there is a period of at least 20 years between—

(i) the date the physical work on this rehabilitation of the building began, and

(ii) the later of—

(I) the date such building was first placed in service, or

(II) the date such building was placed in service in connection with a prior rehabilitation with respect to which a credit was allowed by reason of subsection (a)(1)(E).

(C) Major portion treated as separate building in certain cases

Where there is a separate rehabilitation of a major portion of a building, such major portion shall be treated as a separate building.

(D) Rehabilitation includes reconstruction

Rehabilitation includes reconstruction.

(2) Qualified rehabilitation expenditure defined

(A) In general

The term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account which is incurred after October 31, 1978—

(i) for property (or additions or improvements to property) with a useful life of 5 years or more, and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

(B) Certain expenditures not included

The term "qualified rehabilitation expenditure" does not include—

(i) Property otherwise section 38 property

Any expenditure for property which constitutes section 38 property (determined without regard to subsection (a)(1)(E).[1]

(ii) Cost of acquisition

The cost of acquiring any building or any interest therein.

(iii) Enlargements

Any expenditure attributable to the enlargement of the existing building.

(iv) Certified historic structures

Any expenditure attributable to the rehabilitation of a certified historic structure (within the meaning of section 191(d)(1)), unless the rehabilitation is a certified rehabilitation (within the meaning of section 191(d)(4)).

(3) Property treated as new section 38 property

Property which is treated as section 38 property by reason of subsection (a)(1)(E) shall be treated as new section 38 property.

[(h)–(j) Repealed. Pub. L. 95–600, title III, § 312(c)(1), Nov. 6, 1978, 92 Stat. 2826]

[*See main edition for text of (k)*]

(l) Energy property

For purposes of this subpart—

(1) Treatment as section 38 property

For the period beginning on October 1, 1978, and ending on December 31, 1982—

(A) any energy property shall be treated as meeting the requirements of paragraph (1) of subsection (a), and

(B) paragraph (3) of subsection (a) shall not apply to any energy property.

(2) Energy property defined

The term "energy property" means property—

(A) which is—

(i) alternative energy property,

(ii) solar wind energy property,

(iii) specially defined energy property,

(iv) recycling equipment,

(v) shale oil equipment, or

(vi) equipment for producing natural gas from geopressured brine,

(B)(i) the construction, reconstruction, or erection of which is completed by the taxpayer after September 30, 1978. or

(ii) which is acquired after September 30, 1978, if the original use of such property commences with the taxpayer and commences after such date, and

(C) with respect to which depreciation (or amortization in lieu of depreciation) is allowable, and which has a useful life (determined as of the time such property is placed in service) of 3 years or more.

(3) Alternative energy property

(A) In general

The term "alternative energy property" means—

(i) a boiler the primary fuel for which will be an alternate substance,

(ii) a burner (including necessary on-site equipment to bring the alternate substance to the burner) for a combustor other than a boiler if the primary fuel for such burner will be an alternate substance,

(iii) equipment for converting an alternate substance into a synthetic liquid, gaseous, or solid fuel (other than coke or coke gas),

(iv) equipment designed to modify existing equipment which uses oil or natural gas as a fuel or as feedstock so that such equipment will use either a substance

[1] So in original. Probably should have closing parenthesis.

other than oil and natural gas, or oil mixed with a substance other than oil and natural gas (where such other substance will provide not less than 25 percent of the fuel or feedstock),

(v) equipment which uses coal (including lignite) as a feedstock for the manufacture of chemicals or other products (other than coke or coke gas),

(vi) pollution control equipment required (by Federal, State, or local regulations) to be installed on or in connection with equipment described in clause (i), (ii), (iii), (iv), or (v),

(vii) equipment used for the unloading, transfer, storage, reclaiming from storage, and preparation (including, but not limited to, washing, crushing, drying, and weighing) at the point of use of an alternate substance for use in equipment described in clause (i), (ii), (iii), (iv), (v), or (vi), and

(viii) equipment used to produce, distribute, or use energy derived from a geothermal deposit (within the meaning of section 613(e)(3)), but only, in the case of electricity generated by geothermal power, up to (but not including) the electrical transmission stage.

(B) Exclusion for public utility property

The terms "alternative energy property", "solar or wind energy property", and "recycling equipment" do not include property which is public utility property (within the meaning of section 46(f)(5)).

(C) Alternate substance

The term "alternate substance" means any substance other than—

(i) oil and natural gas, and

(ii) any product of oil and natural gas.

(D) Special rule for certain pollution control equipment

The term "pollution control equipment" does not include any equipment which—

(i) is installed on or in connection with property which, as of October 1, 1978, was using coal (including lignite), and

(ii) was required to be installed by Federal, State, or local regulations in effect on such date.

(4) Solar or wind energy property

The term "solar or wind energy property" means any equipment which uses solar or wind energy—

(A) to generate electricity, or

(B) to heat or cool (or provide hot water for use in) a structure.

(5) Specially defined energy property

The term "specially defined energy property" means—

(A) a recuperator,

(B) a heat wheel,

(C) a regenerator,

(D) a heat exchanger,

(E) a waste heat boiler,

(F) a heat pipe,

(G) an automatic energy control system,

(H) a turbulator,

(I) a preheater,

(J) a combustible gas recovery system,

(K) an economizer, or

(L) any other property of a kind specified by the Secretary by regulations,

the principal purpose of which is reducing the amount of energy consumed in any existing industrial or commercial process and which is installed in connection with an existing industrial or commercial facility.

(6) Recycling equipment

(A) In general

The term "recycling equipment" means any equipment which is used exclusively—

(i) to sort and prepare solid waste for recycling, or

(ii) in the recycling of solid waste.

(B) Certain equipment not included

The term "recycling equipment" does not include—

(i) any equipment used in a process after the first marketable product is produced, or

(ii) in the case of recycling iron or steel, any equipment used to reduce the waste to a molten state and in any process thereafter.

(C) 10 percent virgin material allowed

Any equipment used in the recycling of material which includes some virgin materials shall not be treated as failing to meet the exclusive use requirements of subparagraph (A) if the amount of such virgin materials is 10 percent or less.

(D) Certain equipment included

The term "recycling equipment" includes any equipment which is used in the conversion of solid waste into a fuel or into useful energy such as steam, electricity, or hot water.

(7) Shale oil equipment

The term "shale oil equipment" means equipment for producing or extracting oil from oil-bearing shale rock but does not include equipment for hydrogenation, refining, or other process subsequent to retorting.

(8) Equipment for producing natural gas from geopressured brine

The term "equipment for producing natural gas from geopressured brine" means equipment which is used exclusively to extract natural gas described in section 613A(b)(3)(C)(i).

(9) Equipment must meet certain standards to qualify

Equipment qualifies under paragraph (3), (4), (5), (6), (7), or (8) only if it meets the performance and quality standards (if any) which—

(A) have been prescribed by the Secretary by regulations (after consultation with the Secretary of Energy), and

(B) are in effect at the time of the acquisition of the property.

(10) Existing

For purposes of this subsection, the term "existing" means—

(A) when used in connection with a facility, 50 percent or more of the basis of such

facility is attributable to construction, reconstruction, or erection before October 1, 1978, or

(B) when used in connection with an industrial or commercial process, such process was carried on in the facility as of October 1, 1978.

(11) Special rule for property financed by industrial development bonds

In the case of property which is financed in whole or in part by the proceeds of an industrial development bond (within the meaning of section 103(b)(2)) the interest on which is exempt from tax under section 103, the energy percentage shall be 5 percent.

(12) Industrial includes agricultural

The term "industrial" includes agricultural.

(m) Application of certain transitional rules

Where the application of any provision of subsection (*l*) of this section or subsection (a)(2) or (c)(3) of section 46 is expressed in terms of a period, such provision shall apply only to—

(1) property to which section 46(d) does not apply, the construction, reconstruction, or erection of which is completed by the taxpayer on or after the first day of such period, but only to the extent of the basis thereof attributable to the construction, reconstruction, or erection during such period,

(2) property to which section 46(d) does not apply, acquired by the taxpayer during such period and placed in service by the taxpayer during such period, and

(3) property to which section 46(d) applies, but only to the extent of the qualified investment (as determined under subsections (c) and (d) of section 46) with respect to qualified progress expenditures made during such period.

(n) Requirements for allowance of ESOP percentage

(1) In general

(A) Basic ESOP percentage

The basic ESOP percentage shall not apply to any taxpayer for any taxable year unless the taxpayer on his return for such taxable year agrees, as a condition for the allowance of such percentage—

(i) to make transfers of employer securities to an ESOP maintained by the taxpayer having an aggregate value equal to 1 percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46) for the taxable year, and

(ii) to make such transfers at the times prescribed in subparagraph (C).

(B) Matching ESOP percentage

The matching ESOP percentage shall not apply to any taxpayer for any taxable year unless the basic ESOP percentage applies to such taxpayer for such taxable year, and the taxpayer on his return for such taxable year agrees, as a condition for the allowance of the matching ESOP percentage—

(i) to make transfers of employer securities to an ESOP maintained by the taxpayer having an aggregate value equal to the sum of the qualified matching employee contributions made to such ESOP for the taxable year, and

(ii) to make such transfers at the times prescribed in subparagraph (C).

(C) Times for making transfers

The aggregate of the transfers required under subparagraphs (A) and (B) shall be made—

(i) to the extent allocable to that portion of the ESOP credit allowed for the taxable year or allowed as a carryback to a preceding taxable year, not later than 30 days after the due date (including extensions) for filing the return for the taxable year, or

(ii) to the extent allocable to that portion of the ESOP credit which is allowed as a carryover in a succeeding taxable year, not later than 30 days after the due date (including extensions) for filing the return for such succeeding taxable year.

The Secretary may by regulations provide that transfers may be made later than the times prescribed in the preceding sentence where the amount of any credit or carryover or carryback for any taxable year exceeds the amount shown on the return for the taxable year.

(D) Ordering rules

For purposes of subparagraph (C), the portion of the ESOP credit allowed for the current year or as a carryover or carryback shall be determined—

(i) first by treating the credit or carryover or carryback as attributable to the regular percentage,

(ii) second by treating the portion (not allocated under clause (i)) of such credit or carryover or carryback as attributable to the basic ESOP percentage, and

(iii) finally by treating the portion (not allocated under clause (i) or (ii) as attributable to the matching ESOP percentage.

(2) Qualified matching employee contribution defined

(A) In general

For purposes of this subsection, the term "qualified matching employee contribution" means, with respect to any taxable year, any contribution made by an employee to an ESOP maintained by the taxpayer if—

(i) each employee who is entitled to an allocation of employer securities transferred to the ESOP under paragraph (1)(A) is entitled to make such a contribution,

(ii) the contribution is designated by the employee as a contribution intended to be taken into account under this subparagraph for the taxable year,

(iii) the contribution is paid in cash to the employer or plan administrator not later than 24 months after the close of the taxable year, and is invested forthwith in employer securities, and

(iv) the ESOP meets the requirements of subparagraph (B).

(B) Plan requirements

For purposes of subparagraph (A), an ESOP meets the requirements of this subparagraph if—

(i) participation in the ESOP is not required as a condition of employment and the ESOP does not require matching employee contributions as a condition of participation in the ESOP,

(ii) employee contributions under the ESOP meet the requirements of section 401(a)(4), and

(iii) the ESOP provides for allocation of all employer securities transferred to it or purchased by it (because of the requirements of paragraph (1)(B)) to the account of each participant in an amount equal to such participant's matching employee contributions for the year.

(3) Certain contributions of cash treated as contributions of employer securities

For purposes of this subsection, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the ESOP, used within 30 days to purchase employer securities.

(4) Adjustments if ESOP credit recaptured

If any portion of the ESOP credit is recaptured under section 47 or the ESOP credit is reduced by a final determination—

(A) the employer may reduce the amount required to be transferred to the ESOP under paragraph (1) for the current taxable year or any succeeding taxable year by an amount equal to such portion (or reduction), or

(B) notwithstanding the provisions of paragraph (5) and to the extent not taken into account under subparagraph (A), the employer may deduct an amount equal to such portion (or reduction), subject to the limitations of section 404.

(5) Disallowance of deduction

No deduction shall be allowed under section 162, 212, or 404 for amounts required to be transferred to an ESOP under this subsection.

(6) Definitions

For purposes of this subsection—

(A) Employer securities

The term "employer securities" has the meaning given to such term by section 409A(*l*).

(B) Value

The term "value" means—

(i) in the case of securities listed on a national exchange, the average of closing prices of such securities for the 20 consecutive trading days immediately preceding the due date for filing the return for the taxable year (determined with regard to extensions), or

(ii) in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations prescribed by the Secretary.

(o) Certain credits defined

For purposes of this title—

(1) Regular investment credit

The term "regular investment credit" means that portion of the credit allowable by section 38 which is attributable to the regular percentage.

(2) Energy investment credit

The term "energy investment credit" means that portion of the credit allowable by section 38 which is attributable to the energy percentage.

(3) ESOP credit

The term "ESOP credit" means the sum of—

(A) the basic ESOP credit, and

(B) the matching ESOP credit.

(4) Basic ESOP credit

The term "basic ESOP credit" means that portion of the credit allowable by section 38 which is attributable to the basic ESOP percentage.

(5) Matching ESOP credit

The term "matching ESOP credit" means that portion of the credit allowable by section 38 which is attributable to the matching ESOP.

(6) Basic ESOP percentage

The term "basic ESOP percentage" means the 1-percent ESOP percentage set forth in section 46(a)(2)(E)(i).

(7) Matching ESOP percentage

The term "matching ESOP percentage" means the additional ESOP percentage (not to exceed ½ of 1 percent) set forth in section 46(a)(2)(E)(ii).

(p) Single purpose agricultural or horticultural structure defined

For purposes of this section—

(1) In general

The term "single purpose agricultural or horticultural structure" means—

(A) a single purpose livestock structure, and

(B) a single purpose horticultural structure.

(2) Single purpose livestock structure

The term "single purpose livestock structure" means any enclosure or structure specifically designed, constructed, and used—

(A) for housing, raising, and feeding a particular type of livestock and their produce, and

(B) for housing the equipment (including any replacements) necessary for the housing, raising, and feeding referred to in subparagraph (A).

(3) Single purpose horticultural structure

The term "single purpose horticultural structure" means—

(A) a greenhouse specifically designed, constructed, and used for the commercial production of plants, and

(B) a structure specifically designed, constructed and used for the commercial production of mushrooms.

(4) Structures which include work space

An enclosure or structure which provides work space shall be treated as a single pur-

pose agricultural or horticultural structure only if such work space is solely for—

(A) the stocking, caring for, or collecting of livestock or plants (as the case may be) or their produce,

(B) the maintenance of the enclosure or structure, and

(C) the maintenance or replacement of the equipment or stock enclosed or housed therein.

(5) Special rule for applying section 47

For purposes of section 47, any single purpose agricultural or horticultural structure shall be treated as meeting the requirements of this subsection for any period during which such structure is held for the use under which it qualified under this subsection.

(6) Livestock

The term "livestock" includes poultry.

(q) Cross reference

For application of this subpart to certain acquiring corporations, see section 381(c)(23).

(As amended Pub. L. 95-473, § 2(a)(2)(A), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 95-600, title I, § 141(b), title III, §§ 312(c)(1)-(3), 314(a), (b), 315(a)-(c), title VII, § 703(a)(3), (4), Nov. 6, 1978, 92 Stat. 2791, 2826-2829, 2939; Pub. L. 95-618, title III, § 301(b), (d)(1), (2), Nov. 9, 1978, 92 Stat. 3195, 3199, 3200.)

CODIFICATION

Amendments to subsecs. (*l*) to (q) made by sections 141(b) and 314(b) of P.L. 95-600 and by section 301(b) of Pub. L. 95-618, were executed to text as if Pub. L. 95-618 had been enacted immediately prior to Pub. L. 95-600 to reflect congressional intent. H.R. 5263 (Energy Tax Act of 1978) and H.R. 13511 (Revenue Act of 1978) which were enacted by Congress on Oct. 15, 1978, were approved by the President in inverse order.

AMENDMENTS

1978—Subsec. (a)(1)(A). Pub. L. 95-618, § 301(d)(1), inserted "(other than an air conditioning or heating unit)" following "personal property".

Subsec. (a)(1)(D). Pub. L. 95-600, § 314(a), added subsec. (a)(1)(D).

Subsec. (a)(1)(E). Pub. L. 95-600, § 315(a), added subsec. (a)(1)(E).

Subsec. (a)(2)(B)(ii). Pub. L. 95-473, § 2(a)(2)(A), substituted "providing transportation subject to subchapter I of chapter 105 of title 49" for "subject to part I of the Interstate Commerce Act".

Subsec. (a)(7)(A). Pub. L. 95-600, § 312(c)(3), struck out "(other than pretermination property)" following "Property".

Subsec. (a)(7)(B). Pub. L. 95-600, § 312(c)(2), struck out "described in section 50" following "with respect to property".

Subsec. (a)(8). Pub. L. 95-600, § 315(c), substituted "188, or 191" for "or 188".

Subsec. (a)(10). Pub. L. 95-618, § 301(d)(2), added subsec. (a)(10).

Subsec. (d)(1)(B). Pub. L. 95-600, § 703(a)(3), substituted "section 46(a)(6)" for "section 46(a)(5)".

Subsec. (d)(4)(D). Pub. L. 95-600, § 703(a)(4), substituted "section 57(c)(1)(B)" for "section 57(c)(2)".

Subsec. (g). Pub. L. 95-600, § 315(b), added subsec. (g).

Subsec. (h). Pub. L. 95-600, § 312(c)(1), struck out subsec. (h), which related to the suspension of investment credit.

Subsec. (i). Pub. L. 95-600, § 312(c)(1), struck out subsec. (i), which related to an exemption from suspension of $20,000 of investment.

Subsec. (j). Pub. L. 95-600, § 312(c)(1), struck out subsec. (j), which defined the term "suspension period".

Subsec. (*l*). Pub. L. 95-618, § 301(b), added subsec. (*l*). Former subsec. (*l*) redesignated (n).

Subsec. (m). Pub. L. 95-618, § 301(b), added subsec. (m).

Subsec. (n). Pub. L. 95-618, § 301(b), redesignated former subsec. (*l*) as (n).

Pub. L. 95-600, § 141(b), added subsec. (n). Former subsec. (n) redesignated (p).

Subsec. (o). Pub. L. 95-600, § 141(b), added subsec. (o).

Subsec. (p). Pub. L. 95-600, §§ 141(b), 314(b), added subsec. (p). Former subsec. (n) redesignated (p) and subsequently as (q).

Subsec. (q). Pub. L. 95-600, § 314(b), redesignated former subsec. (p) as (q).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (n) to (p) of this section by section 141(b) of Pub. L. 95-600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409A of this title.

Section 301(d)(4) of Pub. L. 95-618 provided that:

"(A) In general.—The amendments made by this subsection [amending this section and section 167 of this title] shall apply to property which is placed in service after September 30, 1978.

"(B) Binding contracts.—The amendments made by this subsection [amending this section and section 167 of this title] shall not apply to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on October 1, 1978, and at all times thereafter, was binding on the taxpayer."

Amendment of subsecs. (a)(7)(A), (B), (h), (i), (j) of this section by section 312 (c)(1), (2), (3) of Pub. L. 95-600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 314(c) of Pub. L. 95-600 provided that: "The amendments made by subsections (a) [amending subsec. (a)(1)(C), (D) of this section] and (b) [amending subsecs. (p), (q) of this section] shall apply to taxable years ending after August 15, 1971."

Section 315(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (a)(1)(D), (E), (a)(8), (g) of this section] shall apply to taxable years ending after October 31, 1978; except that the amendment made by subsection (c) [amending subsec. (a)(8) of this section] shall only apply with respect to property placed in service after such date."

Amendment of subsec. (d)(1)(B), (d)(4)(D) of this section by section 703(a)(3), (4) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Section 301(c)(2) of Pub. L. 94-12, as amended by Pub. L. 94-455, title VIII, § 801, Oct. 4, 1976, 90 Stat. 1580; Pub. L. 95-600, title III, § 311(b), Nov. 6, 1978, 92 Stat. 2824, provided that: "The amendments made by paragraph (1) [amending subsec. (c)(2) of this section] shall apply only to taxable years beginning after December 31, 1974."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 47, 167, 185, 401, 409A, 861, 6699 of this title.

[§ 49. Repealed. Pub. L. 95-600, title III, § 312(c)(1), Nov. 6, 1978, 92 Stat. 2826]

Section, Pub. L. 91-172, title VII, § 703(a), Dec. 30, 1969, 83 Stat. 660; Pub. L. 92-178, title I, § 101(b)(1) to (4), Dec. 10, 1971, 85 Stat. 498, 499 related to termination of rules for computing credit for investment in certain depreciable property for period beginning Apr. 19, 1969, and ending during 1971.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 95-600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

[§ 50. Repealed. Pub. L. 95-600, title III, § 312(c)(1), Nov. 6, 1978, 92 Stat. 2826]

Section, Pub. L. 92-178, title I, § 101(a), Dec. 10, 1971, 85 Stat. 498, related to the restoration of credit for investment in certain depreciable property.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 95-600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

SUBPART C—RULES FOR COMPUTING CREDIT FOR EXPENSES OF WORK INCENTIVE PROGRAMS

§ 50A. Amount of credit

(a) Determination of amount

(1) General rule

The amount of the credit allowed by section 40 for the taxable year shall be equal to the sum of—

(A) 50 percent of the first-year work incentive program expenses, and

(B) 25 percent of the second-year work incentive program expenses.

(2) Limitation based on amount of tax

Notwithstanding paragraph (1), the amount of the credit allowed by section 40 for the taxable year shall not exceed the liability for tax for the taxable year.

[See main edition for text of (3)]

(4) Limitation with respect to nonbusiness eligible employees

(A) In general

In the case of any work incentive program expenses paid or incurred by the taxpayer during the taxable year to eligible employees whose services are not performed in connection with a trade or business of the taxpayer—

(i) paragraph (1)(A) shall be applied by substituting "35 percent" for "50 percent",

(ii) subparagraph (B) of paragraph (1) shall not apply, and

(iii) the aggregate amount of such work incentive program expenses which may be taken into account under paragraph (1) for such taxable year may not exceed $12,000.

(B) Dependent care credit may not be claimed

No credit shall be allowed under section 44A with respect to any amounts paid or incurred by the taxpayer with respect to which the taxpayer is allowed a credit under section 40.

(C) Married individuals

In the case of a husband or wife who files a separate return, subparagraph (A) shall be applied by substituting "$6,000" and "$12,000". The preceding sentence shall not apply if the spouse of the taxpayer has no work incentive program expenses described in such subparagraph for the taxable year.

[See main edition for text of (b)]

[(c), (d) Repealed. Pub. L. 95-600, title III, § 322(c), Nov. 6, 1978, 92 Stat. 2837]

(As amended Pub. L. 95-600, title III, § 322(a)-(c), Nov. 6, 1978, 92 Stat. 2836, 2837.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 322(a), substituted provision that the amount of the credit allowed by section 40 for the taxable year be equal to the sum of 50 percent of the first-year work incentive program expenses, and 25 percent of the second-year work incentive program expenses for provision that the amount of the credit allowed by section 40 for the taxable year be equal to 20 percent of the work incentive program expenses (as defined in section 50B(a)).

Subsec. (a)(2). Pub. L. 95-600, § 322(a), substituted provision that the amount of the credit allowed by section 40 for the taxable year not exceed the liability for tax for the taxable year for provision that the credit allowed by section 40 for the taxable year not exceed so much of the liability for tax for the taxable year as does not exceed $50,000, plus 50 percent of so much of the liability for tax for the taxable year as exceeds $50,000 and struck out provision that the preceding not apply to so much of the credit allowed by section 40 as is attributable to Federal welfare recipient employment incentive expenses described in subsection (a)(6)(B).

Subsec. (a)(4). Pub. L. 95-600, § 322(b), substituted provisions relating to a limitation with respect to nonbusiness eligible employees for provisions relating to the amount of credit for married individuals filing separate returns.

Subsec. (a)(5). Pub. L. 95-600, § 322(b), struck out subsec. (a)(5), which related to the amount of credit allowed for a controlled group as defined in section 1563(a).

Subsec. (a)(6). Pub. L. 95-600, § 322(b), struck out subsec. (a)(6), which related to a limitation with respect to certain eligible employees.

Subsec. (c). Pub. L. 95-600, § 322(c), struck out subsec. (c), which related to determination of the amount of the credit with respect to early termination of employment.

Subsec. (d). Pub. L. 95-600, § 322(c), struck out subsec. (d), which related to an adjustment in the determination of the amount of the credit for the failure to pay comparable wages.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 322(e) of Pub. L. 95-600 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending subsecs. (a)(1), (2), (4), (5), (6), (c), (d) of this section and sections 50B(a), (c)(1) to (5), (e)(1) to (3), (g), (h), (i) and 280C(a), (b) of this title] shall apply to work incentive program expenses paid or incurred after December 31, 1978, in taxable years ending after such date; except that so much of the amendment made by subsection (a) as affects section 50A(a)(2) of the Internal Revenue Code of 1954 shall apply to taxable years beginning after December 31, 1978.

"(2) SPECIAL RULES FOR CERTAIN ELIGIBLE EMPLOYEES.—

"(A) ELIGIBLE EMPLOYEES HIRED BEFORE SEPTEMBER 27, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired before September 27, 1978, no credit shall be allowed under section 40 with respect to second-year work incentive program expenses (as defined in section 50B(a)) attributable to service performed by such employee.

"(B) ELIGIBLE EMPLOYEES HIRED AFTER SEPTEMBER 26, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired after September 27, 1978, such individual shall be treated for purposes of the credit allowed by section 40 as having first begun work for the taxpayer not earlier than January 1, 1979."

REPORT ON EFFECTIVENESS OF JOBS CREDIT

Section 554 of Pub. L. 95-600 provided that:

"(a) REPORT ON TARGETED JOBS CREDIT.—Not later than June 30, 1981, the Secretary of the Treasury and the Secretary of Labor shall jointly submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

"(1) the effectiveness of the targeted jobs credit provided by the amendments made by this section in improving the employment situation of the targeted groups, and

"(2) the types of employers claiming such credit.

"(b) GENERAL JOBS CREDIT.—The report required under paragraph (1) shall also include an evaluation of—

"(1) the effectiveness of the general jobs credit provided by section 44B of the Internal Revenue Code of 1954 for 1977 and 1978 in stimulating employment and enhancing economic growth, and

"(2) the types of employers claiming such credit."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 280C, 383, 6411 of this title.

§ 50B. Definitions; special rules

(a) Work incentive program expenses

For purposes of this subpart—

(1) In general

The term "work incentive program expenses" means the amount of wages paid or incurred by the taxpayer for services rendered by eligible employees.

(2) First-year work incentive program expenses

The term "first-year work incentive program expenses" means, with respect to any eligible employee, work incentive program expenses attributable to service rendered during the one-year period which begins on the day the eligible employee begins work for the taxpayer.

(3) Second-year work incentive program expenses

The term "second-year work incentive program expenses" means, with respect to any eligible employee, work incentive program expenses attributable to service rendered during the one-year period which begins on the day after the last day of the one-year period described in paragraph (2).

(4) Limitation on amount of work incentive program expenses

The amount of the work incentive program expenses taken into account with respect to any eligible employee for any one-year period described in paragraph (2) or (3) (as the case may be) shall not exceed $6,000.

[See main edition for text of (b)]

(c) Limitations

(1) Reimbursed expenses

No item shall be taken into account under subsection (a) to the extent that the taxpayer is reimbursed for such item.

(2) Geographical limitation

No item shall be taken into account under subsection (a) with respect to any expense paid or incurred by the taxpayer with respect to employment outside the United States.

(3) Ineligible individuals

No item shall be taken into account under subsection (a) with respect to an individual who—

(A) bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than 50 percent in value of the outstanding stock of the corporation (determined with the application of section 267(c)),

(B) if the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in paragraphs (1) through (8) of section 152(a) to a grantor, beneficiary, or fiduciary of the estate or trust, or

(C) is a dependent (described in section 152(a)(9)) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.

[See main edition for text of (d)]

(e) Estates and trusts

In the case of an estate or trust—

(1) the work incentive program expenses for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) any beneficiary to whom any expenses have been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such expenses.

[See main edition for text of (f)]

(g) Special rules for controlled groups

(1) Controlled group of corporations

For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) allowable by section 40 to each such member shall be its proportionate share of the work incentive program expenses giving rise to such credit. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(2) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of this subpart, under regulations prescribed by the Secretary—

(A) all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and

(B) the credit (if any) allowable by section 40 with respect to each trade or business shall be its proportionate share of the work incentive program expenses giving to such credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of paragraph (1).

(h) Eligible employee

(1) Eligible employee

For purposes of this subpart the term "eligible employee" means an individual—

(A) who has been certified by the Secretary of Labor or by the appropriate agency of State or local government as—

(i) being eligible for financial assistance under part A of title IV of the Social Security Act and as having continually received such financial assistance during the 9-day period which immediately precedes the date on which such individual is hired by the employer, or

(ii) having been placed in employment under a work incentive program established under section 432(b)(1) of the Social Security Act,

(B) who has been employed by the taxpayer for a period in excess of 30 consecutive days on a substantially full-time basis,

(C) who has not displaced any other individual from employment by the taxpayer, and

(D) who is not a migrant worker.

The term "eligible employee" includes an employee of the taxpayer whose services are not performed in connection with a trade or business of the taxpayer.

(2) Migrant worker

For purposes of paragraph (1), the term "migrant worker" means an individual who is employed for services for which the customary period of employment by one employer is less than 30 days if the nature of such services requires that such individual travel from place to place over a short period of time.

(i) Cross reference

For application of this subpart to certain acquiring corporations, see section 381(c)(24).

(As amended Pub. L. 95-171, § 1(e), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95-600, title III, § 322(d), Nov. 6, 1978, 92 Stat. 2837.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (h)(1)(A) is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Part A of title IV of the Social Security Act is classified generally to Part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42. Section 432(b)(1) of the Social Security Act is classified to section 632(b)(1) of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 322(d)(1), substituted provisions defining the term "work incentive program expenses" to mean the amount of wages paid or incurred by the taxpayer for services rendered by eligible employees for provisions defining the term "work incentive program expenses" to mean the sum of the amount of wages paid or incurred by taxpayer for services rendered during the first 12 months of employment of certain certified employees plus the amount of Federal welfare recipient employment incentive expenses paid or incurred by taxpayer for services rendered during the first 12 months of employment.

Subsec. (a)(2). Pub. L. 95-600, § 322(d)(1), substituted provisions defining the term "second-year work incentive program expenses" for provisions defining the term "Federal welfare recipient employment incentive expenses".

Subsec. (a)(3). Pub. L. 95-600, § 322(d)(1), substituted provisions defining the term "second-year work incentive program expenses" for provisions relating to the exclusion of items from subsec. (a)(1)(A) and (B).

Subsec. (a)(4). Pub. L. 95-600, § 322(d)(1), added subsec. (a)(4).

Subsec. (c)(1). Pub. L. 95-600, § 322(d)(2), redesignated former subsec. (c)(2) as (c)(1). Former subsec. (c)(1), which related to trade or business expenses, was struck out.

Subsec. (c)(2). Pub. L. 95-600, § 322(d)(2), redesignated former subsec. (c)(3) as (c)(2). Former subsec. (c)(2) redesignated (c)(1).

Subsec. (c)(3). Pub. L. 95-600, § 322(d)(2), redesignated former subsec. (c)(5) as (c)(3). Former subsec. (c)(3) redesignated (c)(2).

Subsec. (c)(4). Pub. L. 95-600, § 322(d)(2), struck out subsec. (c)(4), which related to a maximum period of training or instruction.

Subsec. (c)(5). Pub. L. 95-600, § 322(d)(2), redesignated subsec. (c)(5) as (c)(3).

Subsec. (e). Pub. L. 95-600, § 322(d)(3), struck out par. (3), which provided that the $50,000 amount specified under subparagraph (A) and (B) of section 50A (a)(2) applicable to such estate or trust be reduced to an amount which bears the same ratio to $50,000 as the amount of the expenses allocated to the trust under paragraph (1) bears to the entire amount of such expenses.

Subsec. (g). Pub. L. 95-600, § 322(d)(4), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95-600, § 322(d)(4), (5), redesignated former subsec. (g) as (h) and, as so redesignated, substituted in par. (1) "this subpart" for "subsection (a)(1)(B)" and in par. (1)(A) "9-day period" for "90 day period" and "hired by the employer" for "hired by the taxpayer".

Subsec. (i). Pub. L. 95-600, § 322(d)(4), redesignated former subsec. (h) as (i).

1977—Subsec. (a)(2)(B). Pub. L. 95-171 substituted "October 1, 1978" for "October 1, 1977".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a), (c)(1) to (5), (e)(1) to (3), (g), (h), (i) of this section by section 322(d)(1) to (5) of Pub. L. 95-600 applicable to work incentive program expenses paid or incurred after Dec. 31, 1978, in taxable years ending after such date, see section 322(e)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 50A of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 1(f) of Pub. L. 95-171 provided that: "The amendments made by this section [amending subsec. (a)(2)(B) of this section and provisions set out as notes under sections 1397 and 1397a of Title 42, The Public Health and Welfare] shall be effective on October 1, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 280C of this title.

SUBPART D—RULES FOR COMPUTING CREDIT FOR EMPLOYMENT OF CERTAIN NEW EMPLOYEES

Sec.
51. Amount of credit.
52. Special rules.
53. Limitation based on amount of tax.

AMENDMENTS

1977—Pub. L. 95-30, title II, § 202(b), May 23, 1977, 91 Stat. 141, added subpart D heading and analysis of sections 51, 52, and 53.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 44B of this title.

§ 51. Amount of credit

(a) Determination of amount

The amount of the credit allowable by section 44B for the taxable year shall be the sum of—

(1) 50 percent of the qualified first-year wages for such year, and

(2) 25 percent of the qualified second-year wages for such year.

(b) Qualified wages defined

For purposes of this subpart—

(1) In general

The term "qualified wages" means the wages paid or incurred by the employer during the taxable year to individuals who are members of a targeted group.

(2) Qualified first-year wages

The term "qualified first-year wages" means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer (or, in the case of a vocational rehabilitation referral, the day the individual begins work for the employer on or after the beginning of such individual's rehabilitation plan).

(3) Qualified second-year wages

The term "qualified second-year wages" means, with respect to any individual, the qualified wages attributable to service rendered during the 1-year period beginning on the day after the last day of the 1-year period with respect to such individual determined under paragraph (2).

(4) Only first $6,000 of wages per year taken into account

The amount of the qualified first-year wages, and the amount of the qualified second-year wages, which may be taken into account with respect to any individual shall not exceed $6,000 per year.

(c) Wages defined

For purposes of this subpart—

(1) In general

Except as otherwise provided in this subsection and subsection (h)(2), the term "wages" has the meaning given to such term by subsection (b) of section 3306 (determined without regard to any dollar limitation contained in such section).

(2) Exclusion for employers receiving on-the-job training payments

The term "wages" shall not include any amounts paid by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

(3) Individuals for whom win credit claimed

The term "wages" does not include any amount paid or incurred by the employer to an individual with respect to whom the employer claims credit under section 40.

(4) Termination

The term "wages" shall not include any amount paid or incurred after December 31, 1980.

(d) Members of targeted groups

For purposes of this subpart—

(1) In general

An individual is a member of a targeted group if such individual is—

(A) a vocational rehabilitation referral,

(B) an economically disadvantaged youth,

(C) an economically disadvantaged Vietnam-era veteran,

(D) an SSI recipient,

(E) a general assistance recipient, or

(F) a youth participating in a cooperative education program, or

(G) an economically disadvantaged ex-convict.

(2) Vocational rehabilitation referral

The term "vocational rehabilitation referral" means any individual who is certified by the designated local agency as—

(A) having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment, and

(B) having been referred to the employer upon completion of (or while receiving) rehabilitative services pursuant to—

(i) an individualized written rehabilitation plan under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, or

(ii) a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

(3) Economically disadvantaged youth

(A) In general

The term "economically disadvantaged youth" means any individual who is certified by the designated local agency as—

(i) meeting the age requirements of subparagraph (B), and

(ii) being a member of an economically disadvantaged family (as determined under paragraph (9)).

(B) Age requirements

An individual meets the age requirements of this subparagraph if such individual has attained age 18 but not age 25 on the hiring date.

(4) Vietnam veteran who is a member of an economically disadvantaged family

The term "Vietnam veteran who is a member of an economically disadvantaged family" means any individual who is certified by the designated local agency as—

(A)(i) having served on active day[1] (other than active duty for training) in the Armed Forces of the United States for a period of more than 180 days, any part of which occurred after August 4, 1964, and before May 8, 1975, or

(ii) having been discharged or released from active duty in the Armed Forces of the United States for a service-connected disability if any part of such active duty was performed after August 4, 1964, and before May 8, 1975,

(B) not having any day during the preemployment period which was a day of extended active duty in the Armed Forces of the United States,

(C) being a member of an economically disadvantaged family (determined under paragraph (9)), and

(D) not having attained the age of 35 on the hiring date.

For purposes of subparagraph (B), the term "extended active duty" means a period of more than 90 days during which the individual was on active duty (other than active duty for training).

(5) SSI recipients

The term "SSI recipient" means any individual who is certified by the designated local agency as receiving supplemental security income benefits under title XVI of the Social Security Act (including supplemental security income benefits of the type described in section 1616 of such Act or section 212 of Public Law 93-66) for any month ending in the preemployment period.

(6) General assistance recipients

(A) In general

The term "general assistance recipient" means any individual who is certified by the designated local agency as receiving assistance under a qualified general assistance program for any period of not less than 30 days ending within the preemployment period.

(B) Qualified general assistance program

The term "qualified general assistance program" means any program of a State or a political subdivision of a State—

(i) which provides general assistance or similar assistance which—

(I) is based on need, and

(II) consists of money payments, and

(ii) which is designated by the Secretary (after consultation with the Secretary of Health, Education, and Welfare) as meeting the requirements of clause (i).

(7) Economically disadvantaged ex-convict

The term "economically disadvantaged ex-convict" means any individual who is certified by the designated local agency—

(A) as having been convicted of a felony under any statute of the United States or any State,

(B) as being a member of an economically disadvantaged family (as determined under paragraph (9)), and

(C) as having a hiring date which is not more than 5 years after the last date on which such individual was so convicted or was released from prison.

(8) Youth participating in a qualified cooperative education program

(A) In general

The term "youth participating in a qualified cooperative education program" means any individual who is certified by the school participating in the program as—

(i) having attained age 16 and not having attained age 19,

(ii) not having graduated from a high school or vocational school, and

(iii) being enrolled in and actively pursuing a qualified cooperative education program.

(B) Qualified cooperative education program defined

The term "qualified cooperative education program" means a program of vocational education for individuals who (through written cooperative arrangements between a qualified school and 1 or more employers) receive instruction (including required academic instruction) by alternation of study and school with a job in any occupational field (but only if these 2 experiences are planned by the school and employer so that each contributes to the student's education and employability).

(C) Qualified school defined

The term "qualified school" means—

(i) a specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market,

(ii) the department of a high school exclusively or principally used for providing vocational education to persons who are available for study in preparation for entering the labor market, or

(iii) a technical or vocational school used exclusively or principally for the provision of vocational education to persons who have completed or left high school and who are available for study in preparation for entering the labor market.

A school which is not a public school shall be treated as a qualified school only if it is exempt from tax under section 501(a).

[1] So in original. Probably should be "duty".

(D) Individual must be currently pursuing program

Wages shall be taken into account with respect to a qualified cooperative education program only if the wages are attributable to services performed while the individual meets the requirements of subparagraph (A).

(9) Members of economically disadvantaged families

An individual is a member of an economically disadvantaged family if the designated local agency determines that such individual was a member of a family which had an income during the 6 months immediately preceding the month in which the hiring date occurs, which, on an annual basis would be less than 70 percent of the Bureau of Labor Statistics lower living standard.

(10) Preemployment period

The term "preemployment period" means the 60-day period ending on the hiring date.

(11) Hiring date

The term "hiring date" means the day the individual is hired by the employer.

(12) Designated local agency

The term "designated local agency" means the agency for any locality designated jointly by the Secretary and the Secretary of Labor to perform certification of employees for employer in that locality.

(e) Qualified first-year wages cannot exceed 30 percent of FUTA wages for all employees

The amount of the qualified first-year wages which may be taken into account under subsection (a)(1) for any taxable year shall not exceed 30 percent of the aggregate unemployment insurance wages paid by the employer during the calendar year ending in such taxable year. For purposes of the preceding sentence, the term "unemployment insurance wages" has the meaning given to the term "wages" by section 3306(b).

(f) Remuneration must be for trade or business employment

(1) In general

For purposes of this subpart, remuneration paid by an employer to an employee during any year shall be taken into account only if more than one-half of the remuneration so paid is for services performed in a trade or business of the employer.

(2) Special rule for certain determination

Any determination as to whether paragraph (1), or subparagraph (A) or (B) of subsection (h)(1), applies with respect to any employee for any year shall be made without regard to subsections (a) and (b) of section 52.

(3) Year defined

For purposes of this subsection and subsection (h), the term "year" means the taxable year; except that, for purposes of applying so much of such subsections as relates to subsection (e), such term means the calendar year.

(g) Secretary of Labor to notify employers of availability of credit

The Secretary of Labor, in consultation with the Internal Revenue Service, shall take such steps as may be necessary or appropriate to keep employers apprised of the availability of the credit provided by section 44B.

(h) Special rules for agricultural labor and railway labor

For purposes of this subpart—

(1) Unemployment insurance wages

(A) Agricultural labor

If the services performed by any employee for an employer during more than one-half of any pay period (within the meaning of section 3306(d)) taken into account with respect to any year constitute agricultural labor (within the meaning of section 3306(k)), the term "unemployment insurance wages" means, with respect to the remuneration paid by the employer to such employee for such year, an amount equal to so much of such remuneration as constitutes "wages" within the meaning of section 3121(a), except that the contribution and benefit base for each calendar year shall be deemed to be $6,000.

(B) Railway labor

If more than one-half of remuneration paid by an employer to an employee during any year is remuneration for service described in section 3306(c)(9), the term "unemployment insurance wages" means, with respect to such employee for such year, an amount equal to so much of the remuneration paid to such employee during such year which would be subject to contributions under section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) if the maximum amount subject to such contributions were $500 per month.

(2) Wages

In any case to which subparagraph (A) or (B) of paragraph (1) applies, the term "wages" means unemployment insurance wages (determined without regard to any dollar limitation).

(Added Pub. L. 95-30, title II, § 202(b), May 23, 1977, 91 Stat. 141, and amended Pub. L. 95-600, title III, § 321(a), Nov. 6, 1978, 92 Stat. 2830.)

REFERENCES IN TEXT

The Rehabilitation Act of 1973, referred to in subsec. (d)(2)(B)(i), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Social Security Act, referred to in subsec. (d)(5) is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title XVI of the Social Security Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of Title 42. Section 1616 of such Act is classified to section 1382e of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 212 of Pub. L. 93-66, referred to in subsec. (d)(5), is section 212 of Pub. L. 93-66, July 9, 1973, 87 Stat. 155, which is set out as a note under section 1382 of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 51, added Pub. L. 90-364, title I, § 102(a), June 28, 1968, 82 Stat. 252, and amended Pub. L. 91-53, § 5(a), Aug. 7, 1969, 83 Stat. 93; Pub. L. 91-172, title III, § 301(b)(5), title VII, § 701(a), Dec. 30, 1969, 83 Stat. 585, 657, which related to the imposition of a tax surcharge, was repealed by Pub. L. 94-455, title XIX, § 1901(a)(7), Oct. 4, 1976, 90 Stat. 1765.

AMENDMENTS

1978—Pub. L. 95-600 limited allowance of credit to the hiring of seven target groups with high unemployment rates.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 321(d)(1) of Pub. L. 95-600 provided that: "Except as otherwise provided in this subsection, the amendments made by this section [amending sections 44B(a), (c), 51, 52(a) to (j), 53, and 6501(q) of this title] shall apply to amounts paid or incurred after December 31, 1978, in taxable years ending after such date."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

SPECIAL RULES FOR NEWLY TARGETED GROUPS

Section 321(d)(2) of Pub. L. 95-600 provided that:

"(A) INDIVIDUAL MUST BE HIRED AFTER SEPTEMBER 26, 1978.—In the case of a member of a newly targeted group—

"(i) such individual shall be taken into account for purposes of the credit allowable by section 44B of the Internal Revenue Code of 1954 only if such individual is first hired by the employer after September 26, 1978, and

"(ii) such individual shall be treated for purposes of such credit as having first begun work for the employer not earlier than January 1, 1979.

"(B) MEMBER OF NEWLY TARGETED GROUP DEFINED.—For purposes of subparagraph (A), an individual is a member of a newly targeted group if—

"(i) such individual meets the requirements of subparagraph (A), (C), (D), (E), (F), or (G) of section 51(d)(1) of such Code, and

"(ii) in the case of an individual meeting the requirements of subparagraph (A) of such section 51(d)(1), a credit was not claimed for such individual by the taxpayer for a taxable year beginning before January 1, 1979."

CREDIT ALLOWABLE BY SECTION 44B IN CASE OF TAXABLE YEAR BEGINNING IN 1978 AND ENDING AFTER DECEMBER 31, 1978

Section 321(d)(3) of Pub. L. 95-600 provided that:

"In the case of a taxable year which begins in 1978 and ends after December 31, 1978, the amount of the credit allowable by section 44B of the Internal Revenue Code of 1954 (determined without regard to section 53 of such Code) shall be the sum of—

"(A) the amount of the credit which would be so allowable without regard to the amendments made by this section, plus

"(B) the amount which would be so allowable by reason of the amendments made by this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 53 of this title.

§ 52. Special rules

(a) Controlled group of corporations

For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) allowable by section 44B to each such member shall be its proportionate share of the wages giving rise to such credit. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(1) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(2) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(b) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of this subpart, under regulations prescribed by the Secretary—

(1) all employees of trades or business (whether or not incorporated) which are under common control shall be treated as employed by a single employer, and

(2) the credit (if any) allowable by section 44B with respect to each trade or business shall be its proportionate share of the wages giving rise to such credit.

The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (a).

(c) Tax-exempt organizations

No credit shall be allowed under section 44B to any organization (other than a cooperative described in section 521) which is exempt from income tax under this chapter.

(d) Subchapter S corporations

In the case of an electing small business corporation (as defined in section 1371)—

(1) the amount of the credit determined under this subpart for any taxable year shall be apportioned pro rata among the persons who are shareholders of such corporation on the last day of such taxable year, and

(2) any person to whom an amount is apportioned under paragraph (1) shall be allowed, subject to section 53, a credit under section 44B for such amount.

(e) Estates and trusts

In the case of an estate or trust—

(1) the amount of the credit determined under this subpart for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) any beneficiary to whom any amount has been apportioned under paragraph (1) shall be allowed, subject to section 53, a credit under section 44B for such amount.

(f) Limitations with respect to certain persons

Under regulations prescribed by the Secretary, in the case of—

(1) an organization to which section 593 (relating to reserves for losses on loans) applies,

(2) a regulated investment company or a real estate investment trust subject to taxation under subchapter M (section 851 and following), and

(3) a cooperative organization described in section 1381(a),

rules similar to the rules provided in section 46(e) shall apply in determining the amount of the credit under this subpart.

(Added Pub. L. 95-30, title II, § 202(b), May 23, 1977, 91 Stat. 143, and amended Pub. L. 95-600, title III, § 321(c)(1), Nov. 6, 1978, 92 Stat. 2835.)

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95-600, § 321(c)(1)(B), substituted "proportionate share of the wages" for "proportionate contribution to the increase in unemployment insurance wages".

Subsec. (c). Pub. L. 95-600, § 321(c)(1)(A), redesignated former subsec. (d) as (c). Former subsec. (c), which related to dispositions by an employer, was struck out.

Subsec. (d). Pub. L. 95-600, § 321(c)(1)(A), redesignated former subsec. (f) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95-600, § 321(c)(1)(A), (C), redesignated former subsec. (g) as (e) and, as so redesignated, struck out par. (3), which provided that the $100,000 amount specified in section 51(d) applicable to such estate or trust be reduced to an amount which bears the same ratio to $100,000 as the portion of the credit allocable to the estate or trust under paragraph (1) bears to the entire amount of such credit. Former subsec. (e), which related to a change in status from self-employed to employee, was struck out.

Subsec. (f). Pub. L. 95-600, § 321(c)(1)(A), redesignated former subsec. (h) as (f). Former subsec. (f) redesignated (d).

Subsec. (g). Pub. L. 95-600, § 321(c)(1)(A), redesignated subsec. (g) as (e).

Subsec. (h). Pub. L. 95-600, § 321(c)(1)(A), redesignated subsec. (h) as (f).

Subsec. (i). Pub. L. 95-600, § 321(c)(1)(A)(i), struck out subsec. (i), which related to a $50,000 limitation in the case of married individuals filing separate returns.

Subsec. (j). Pub. L. 95-600, § 321(c)(1)(A)(i), struck out subsec. (j), which related to certain short taxable years.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a) to (j) of this section by section 321(c)(1)(A) to (C) of Pub. L. 95-600 applicable to amounts paid or incurred after Dec. 31, 1978, in taxable years ending after such date, see section 321(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 51 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 280C of this title.

§ 53. Limitations based on amount of tax

(a) General rule

Notwithstanding section 51, the amount of the credit allowed by section 44B for the taxable year shall not exceed 90 percent of the excess of the tax imposed by this chapter for the taxable year over the sum of the credits allowable under—

(1) section 33 (relating to foreign tax credit),

(2) section 37 (relating to credit for the elderly),

(3) section 38 (relating to investment in certain depreciable property),

(4) section 40 (relating to expenses of work incentive programs),

(5) section 41 (relating to contributions to candidates for public office),

(6) section 42 (relating to general tax credit), and

(7) section 44A (relating to expenses for household and dependent care services necessary for gainful employment).

For purposes of this subsection, any tax imposed for the taxable year by section 56 (relating to minimum tax for tax preferences), section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees), section 408(f) (relating to additional tax on income from certain retirement accounts), section 402(e) (relating to tax on lump-sum distributions), section 531 (relating to accumulated earnings tax), section 541 (relating to personal holding company tax), or section 1378 (relating to tax on certain capital gains of subchapter S corporations), and any additional tax imposed for the taxable year by section 1351(d)(1) (relating to recoveries of foreign expropriation losses), shall not be considered tax imposed by this chapter for such year.

(b) Carryback and carryover of unused credit

(1) Allowance of credit

If the amount of the credit determined under section 51 for any taxable year exceeds the limitation provided by subsection (a) for such taxable year (hereinafter in this subsection referred to as the "unused credit year"), such excess shall be—

(A) a new employee credit carryback to each of the 3 taxable years preceding the unused credit year, and

(B) a new employee credit carryover to each of the 7 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by section 44B for such years. If any portion of such excess is a carryback to a taxable year beginning before January 1, 1977, section 44B shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under such section. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 10 taxable years to which (by reason of subparagraphs (A) and (B) such credit may be carried, and then to each of the other 9 taxable years to the extent that, because of the limitation contained in paragraph (2), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(2) Limitation

The amount of the unused credit which may be added under paragraph (1) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by subsection (a) for such taxable year exceeds the sum of—

(A) the credit allowable under section 44B for such taxable year, and

(B) the amounts which, by reason of this subsection, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

(Added Pub. L. 95-30, title II, § 202(b), May 23, 1977, 91 Stat. 146, and amended Pub. L. 95-600, title III, § 321(c)(2), Nov. 6, 1978, 92 Stat. 2835.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 321(c)(2)(A), substituted "90 percent of the excess of the tax imposed by this chapter for the taxable year over" for "the amount of the tax imposed by this chapter for the taxable year, reduced by".

Subsec. (b). Pub. L. 95-600, § 321(c)(2)(B), redesignated former subsec. (c) as (b). Former subsec. (b), which related to a special rule for pass-thru of credit, was struck out.

Subsec. (c). Pub. L. 95-600, § 321(c)(2)(B), redesignated subsec. (c) as (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 321(d)(4) of Pub. L. 95-600 provided that: "The amendments made by subsection (u)(2) [probably means (c)(2), amending subsecs. (a) to (c) of this section] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 52, 55, 280C, 383, 6411 of this title.

PART VI—MINIMUM TAX FOR TAX PREFERENCES

Sec.
55. Alternative minimum tax for taxpayers other than corporations.

AMENDMENTS

1978—Pub. L. 95-600, title IV, § 421(f), Nov. 6, 1978, 92 Stat. 2877, added item 55.

§ 55. Alternative minimum tax for taxpayers other than corporations

(a) Alternative minimum tax imposed

In the case of a taxpayer other than a corporation, if—

(1) an amount equal to the sum of—

(A) 10 percent of so much of the alternative minimum taxable income as exceeds $20,000 but does not exceed $60,000 plus

(B) 20 percent of so much of the alternative minimum taxable income as exceeds $60,000 but does not exceed $100,000, plus

(C) 25 percent of so much of the alternative minimum taxable income as exceeds $100,000, exceeds

(2) the regular tax for the taxable year,

then there is imposed (in addition to all other taxes imposed by this title) a tax equal to the amount of such excess.

(b) Definitions

For purposes of this section—

(1) Alternative minimum taxable income

The term "alternative minimum taxable income" means gross income—

(A) reduced by the sum of the deductions allowed for the taxable year,

(B) reduced by the sum of any amounts included in income under section 667, and

(C) increased by an amount equal to the sum of the tax preference items for—

(i) adjusted itemized deductions (within the meaning of section 57(a)(1)), and

(ii) capital gains (within the meaning of section 57(a)(9)).

(2) Regular tax

The term "regular tax" means the taxes imposed by this chapter for the taxable year (computed without regard to this section and without regard to the taxes imposed by sections 72(m)(5)(B), 402(e), 408(f), and 667(b)) reduced by the sum of the credits allowable under subpart A of part IV of this subchapter (other than under sections 31, 39 and 43).

(c) Credits

(1) Credits other than the foreign tax credit not allowable

For purposes of determining the amount of any credit allowable under subpart A of part IV of this subchapter (other than the foreign tax credit allowed under section 33(a)), the tax imposed by this section shall not be treated as a tax imposed by this chapter.

(2) Foreign tax credit allowed against alternative minimum tax

The total amount of the foreign tax credit which can be taken against the tax imposed by subsection (a) shall be determined under section 901 and sections 903 through 908. For purposes of this determination—

(A) the amount of taxes paid or accrued to foreign countries or possessions of the United States in the taxable year shall be deemed to include an amount equal to the lesser of (i) the foreign tax credit allowed under section 33(a) in computing the regular tax for the taxable year, or (ii) the tax imposed under subsection (a);

(B) the limitation of section 904(a) shall be an amount equal to the same proportion of the sum of the tax imposed by this section against which such credit is taken and the regular tax (excluding the tax imposed by section 56) which the taxpayer's alternative minimun taxable income from sources without the United States (but not in excess of the taxpayer's entire alternative minimum taxable income) bears to his entire alternative minimum taxable income for the same taxable year. For purposes of the preceding sentence, the entire alternative minimum taxable income shall be reduced by an amount equal to the zero bracket amount;

(C) the term "alternative minimum taxable income from sources without United States" means the excess of the items of gross income from sources without the United States over that portion of the deductions taken into account in computing alternative minimum taxable income which are deducted from those items of gross income in computing taxable income from sources without the United States; for purposes of this subparagraph, and except as provided in section 904, gross and taxable income from sources without the United States shall be determined under part I of subchapter N of chapter 1; and

(D) the amount of foreign taxes paid during the taxable year which may be deemed to be paid in a preceding or succeeding year under section 904(c), the limitation of section 904(a) shall be increased by the lesser of (i) the amount described in subparagraph (B) or (ii) the tax imposed under subsection (a).

(3) Carryover and carryback of certain credits

In any taxable year in which a tax is imposed by this section (referred to as the current taxable year)—

(A) Employment credit

For purposes of determining under section 53(c) the amount of any jobs credit carryback or carryover to any other taxable year, the amount of the limitation under section 53(a) for the current taxable year shall be deemed to be—

(i) the amount of the credit allowable under section 44B for the current taxable year without regard to this subparagraph, reduced by

(ii) the amount equal to the lesser of (I) the amount of the credit allowable under section 44B for the current taxable year without regard to this subparagraph, or (II) the net tax imposed by this section for the current taxable year.

(B) Work incentive program credit

For purposes of determining under section 50A(b) the amount of any work incentive program credit carryback or carryover to any other taxable year, the amount of the limitation under section 50A(a)(2) for the current taxable year shall be deemed to be—

(i) the amount of the credit allowable under section 40 for the current taxable year without regard to this subparagraph, reduced by

(ii) the amount equal to the lesser of (I) the amount of the credit allowable under section 40 for the current taxable year without regard to this subparagraph, or, (II) the net tax imposed by this section for the current taxable year reduced by the amount of reduction described in clause (ii) of subparagraph (A).

(C) Investment credit

For purposes of determining under section 46(b) the amount of any investment credit carryback or carryover to any other taxable year, the amount of the limitation under section 46(a)(3) for the current taxable year shall be deemed to be

(i) the amount of the credit allowable under section 38 for the current taxable year without regard to this subparagraph, reduced by

(ii) the amount equal to the lesser of (I) the amount of the credit allowable under section 38 for the current taxable year without regard to this subparagraph, or (II) the net tax imposed by this section for the current taxable year reduced by the sum of the amounts of reduction described in clause (ii) of subparagraphs (A) and (B).

(D) Net tax imposed by this section

For purposes of this paragraph, the term "net tax imposed by this section" means the tax imposed by this section reduced by the foreign tax credit allowed under section 33(a), as modified by paragraph (2).

(Added Pub. L. 95-600, title IV, § 421(a), Nov. 6, 1978, 92 Stat. 2871.)

EFFECTIVE DATE

Section 421(g) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this section and amending sections 5(a)(4), 57(a), (a)(9)(D), (b)(1), (b)(2)(A), 58(a), (c), (i), 443(d), 511(d), 666(b), 871(b)(1), 877(b), 904(h), 6015(c)(1), 6362(b)(A), and 6654(f)(1) of this title] shall apply to taxable years beginning after December 31, 1978, except that the amendment made by paragraph (1) of subsection (b) [amending section 57(a)(9)(D) of this title] shall apply to sales and exchanges made after July 26, 1978, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 58, 443, 511, 666, 871, 877, 904, 6015, 6362, 6654 of this title.

§ 56. Imposition of tax

[See main edition for text of (a) and (b)]

(c) Regular tax deduction defined

For purposes of this section, the term "regular tax deduction" means an amount equal to one-half of (or in the case of a corporation, an amount equal to) the taxes imposed by this chapter for the taxable year (computed without regard to this part and without regard to the taxes imposed by sections 72(m)(5)(B), 402(e), 408(f), 531, and 541), reduced by the sum of the credits allowable under subpart A of part IV other than under sections 31, 39, and 43. For purposes of the preceding sentence, the amount of the credit allowable under section 38 shall be determined without regard to the ESOP percentage set forth in section 46(a)(2)(E).

[See main edition for text of (d)]

(e) Tax carryover for timber

(1) In general

In the case of a corporation, if for any taxable year, including a taxable year beginning before January 1, 1976—

(A) the taxes imposed by this chapter (computed without regard to this part and without regard to the tax imposed by section 531) which, under regulations prescribed by the Secretary, are attributable to income from timber, reduced by the sum of the credits allowable under—

(i) section 33 (relating to foreign tax credit),

(ii) section 38 (relating to investment credit),

(iii) section 40 (relating to expenses of work incentive programs), and

(iv) section 44B (relating to credit for employment of certain new employees),

exceed

(B) the items of tax preference (as determined under section 57),

then the excess of the taxes described in subparagraph (A) over the items of tax prefer-

ence shall be a tax carryover to each of the 7 taxable years following such year. The entire amount of the excess shall be carried to the first of such 7 taxable years, and then to each of the other such taxable years to the extent that such excess is not used to reduce the amount subject to tax under subsection (a) for a prior taxable year to which such excess may be carried.

[See main edition for text of (2)]

(As amended Pub. L. 95–30, title II, § 202(d)(2), May 23, 1977, 91 Stat. 148; Pub. L. 95–600, title I, § 141(d), Nov. 6, 1978, 92 Stat. 2794; Pub. L. 95–618, title I, § 101(b)(2), Nov. 9, 1978, 92 Stat. 3179.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95–618 substituted provisions relating to the sum of the credits allowable under subpart A of part IV other than sections 31, 39, and 43 for provisions relating to the sum of credits allowable under sections 33, 37, 38, 40, 41, 42, 44, 44A, and 44B.

Pub. L. 95–600 provided that the amount of credit allowable under section 38 be determined without regard to the ESOP percentage set forth in section 46(a)(2)(E).

1977—Subsec. (c)(9). Pub. L. 95–30, § 202(d)(2)(A), added subsec. (c)(9).

Subsec. (e)(1)(A)(iv). Pub. L. 95–30, § 202(d)(2)(B), added subsec. (e)(1)(A)(iv).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–618 applicable to taxable years ending on or after April 20, 1977, see section 101(c) of Pub. L. 95–618, set out as an Effective Date note under section 44C of this title.

Amendment of subsec. (c) of this section by section 141(d) of Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date note under section 409A of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 44B of this title.

RETROACTIVE APPLICATION OF AMENDMENT OF SECTION 56(c) BY SECTION 141(d) OF PUB. L. 95–600

Section 141(g)(2) of Pub. L. 95–600 provided that: "In determining the regular tax deduction under section 6 of the Internal Revenue Code of 1954 for any taxable year beginning before January 1, 1979, the amount of the credit allowable under section 38 shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978 [Nov. 9, 1978])."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 46, 50A, 53, 55, 57, 58, 443, 453, 511, 901, 936, 1373, 6015, 6362, 6654 of this title.

§ 57. Items of tax preference

(a) In general

For purposes of this part, the items of tax preference are—

(1) Adjusted itemized deductions

In the case of an individual, an amount equal to the adjusted itemized deductions for the taxable year (as determined under subsection (b)).

(2) Accelerated depreciation on real property

With respect to each section 1250 property (as defined in section 1250(c)), the amount by which the deduction allowable for the taxable year for exhaustion, wear and tear, obsolescence, or amortization exceeds the depreciation deduction which would have been allowable for the taxable year had the taxpayer depreciated the property under the straight line method for each taxable year of its useful life (determined without regard to section 167(k) or 191) for which the taxpayer has held the property.

[See main edition for text of (3) to (8)]

(9) Capital gains

(A) Individuals

In the case of a taxpayer other than a corporation, an amount equal to the net capital gain deduction for the taxable year determined under section 1202.

(B) Corporations

In the case of a corporation having a net capital gain for the taxable year, an amount equal to the product obtained by multiplying the net capital gain by a fraction the numerator of which is the highest rate of tax specified in section 11(b), minus the alternative tax rate under section 1201(a), for the taxable year, and the denominator of which is the highest rate of tax specified in section 11(b) for the taxable year. In the case of a corporation to which section 1201(a) does not apply, the amount under this subparagraph shall be determined under regulations prescribed by the Secretary in a manner consistent with the preceding sentence.

[See main edition for text of (C)]

(D) Principal residence

For purposes of subparagraph (A), gain from the sale or exchange of a principal residence (within the meaning of section 1034) shall not be taken into account.

(10) Amortization of child care facilities

With respect to each item of section 188 property for which an election is in effect under section 188, the amount by which the deduction allowable for the taxable year under such section exceeds the depreciation deduction which would otherwise be allowable under section 167.

(11) Intangible drilling costs

(A) In general

With respect to all oil, gas, and geothermal properties of the taxpayer, the amount (if any) by which the amount of the excess intangible drilling costs arising in the taxable year is greater than the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year.

(B) Excess intangible drilling costs

For purposes of subparagraph (A), the amount of the excess intangible drilling

costs arising in the taxable year is the excess of—

(i) the intangible drilling and development costs described in section 263(c) paid or incurred in connection with oil, gas, and geothermal wells (other than costs incurred in drilling a nonproductive well) allowable under this chapter for the taxable year, over

(ii) the amount which would have been allowable for the taxable year if such costs had been capitalized and straight line recovery of intangibles (as defined in subsection (d)) had been used with respect to such costs.

(C) Net income from oil, gas, and geothermal properties

For purposes of subparagraph (A), the amount of the net income of the taxpayer from oil, gas, and geothermal properties for the taxable year is the excess of—

(i) the aggregate amount of gross income (within the meaning of section 613(a)) from all oil, gas, and geothermal properties of the taxpayer received or accrued by the taxpayer during the taxable year, over

(ii) the amount of any deductions allocable to such properties reduced by the excess described in subparagraph (B) for such taxable year.

(D) Paragraph applied separately with respect to geothermal properties and oil and gas properties

This paragraph shall be applied separately with respect to—

(i) all oil and gas properties which are not described in clause (ii), and

(ii) all properties which are geothermal deposits (as defined in section 613(e)(3)).

Paragraphs (3) and (11) shall not apply to a corporation other than an electing small business corporation (as defined in section 1371 (b)) and a personal holding company (as defined in section 542). For purposes of section 56, in the case of a taxpayer other than a corporation, the adjusted itemized deductions described in paragraph (1) and capital gains described in paragraph (9) shall not be treated as items of tax preference.

(b) Adjusted itemized deductions

(1) In general

For purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the itemized deductions (as defined in section 63(f)) other than—

(A) the deduction for State and local taxes provided by section 164(a),

(B) the deduction for medical, dental, etc., expenses provided by section 213,

(C) the deduction for casualty losses described in section 165(c)(3),

(D) the deduction allowable under section 691(c), and

(E) the deduction allowable under section 691(c),

exceeds 60 percent of the taxpayer's adjusted gross income reduced by the items in subparagraphs (A) through (D) for the taxable year.

(2) Special rules for estates and trusts

(A) In general

In the case of an estate or trust, for purposes of paragraph (1) of subsection (a), the amount of the adjusted itemized deductions for any taxable year is the amount by which the sum of the deductions for the taxable year other than—

(i) the deductions allowable in arriving at adjusted gross income,

(ii) the deduction for personal exemption provided by section 642(b),

(iii) the deduction for casualty losses described in section 165(c)(3),

(iv) the deductions allowable under section 651(a), 661(a), or 691(c),

(v) the deduction for State and local taxes provided by section 164(a), and

(vi) the deductions allowable to a trust under section 642(c) to the extent that a corresponding amount is included in the gross income of the beneficiary under section 662(a)(1) for the taxable year of the beneficiary with which or within which the taxable year of the trust ends,

exceeds 60 percent of the adjusted gross income reduced by the items in clauses (i) through (vi) for the taxable year.

(B) Determination of adjusted gross income

For purposes of this paragraph, the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that—

(i) the deductions for costs paid or incurred in connection with the administration of the estate or trust, and

(ii) to the extent provided in subparagraph (C), the deductions under section 642(c),

shall be treated as allowable in arriving at adjusted gross income.

(C) Treatment of certain charitable contributions

For purposes of this paragraph, the following deductions under section 642(c) (relating to deductions for amounts paid or permanently set aside for charitable purposes) shall be treated as deductions allowable in arriving at adjusted gross income:

(i) deductions allowable to an estate,

(ii) deductions allowable to a trust all of the unexpired interests in which are devoted to one or more of the purposes described in section 170(c)(2)(B),

(iii) deductions allowable to a trust which is a pooled income fund within the meaning of section 642(c)(5),

(iv) deductions allowable to a trust which are attributable to transfers to the trust before January 1, 1977, and

(v) deductions allowable to a trust, all of the income interest of which is devoted solely to one or more of the purposes described in section 170(c)(2)(B), which are attributable to transfers pursuant to a will or pursuant to an inter vivos trust in

which the grantor had the power to revoke at the date of his death.

[See main edition for text of (c) to (e)]

(As amended Pub. L. 95–30, title I, § 101(d)(5), title III, § 308(a), title IV, § 402(a)(5), May 23, 1977, 91 Stat. 133, 153, 155; Pub. L. 95–600, title III, § 301(b)(2), title IV, §§ 402(b)(1), 421(b), title VII, § 701(b)(1), (3), (4), (f)(3)(D), Nov. 6, 1978, 92 Stat. 2820, 2868, 2874, 2898, 2899, 2901; Pub. L. 95–618, title IV, § 402(b), Nov. 9, 1978, 92 Stat. 3202.)

CODIFICATION

Subpar. (E) of subsec. (b)(1) as added by section 701(b)(4) of Pub. L. 95–600, is identical to subpar. (D) of subsec. (b)(1) as amended by section 421(b)(3) of Pub. L. 95–600.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95–600, § 701(b)(1)(A), inserted introductory phrase "In the case of an individual".

Subsec. (a)(2). Pub. L. 95–600, § 701(f)(3)(D), provided for depreciation of property under the straight line method for each taxable year of its useful life, determined without regard to section 191 of this title.

Subsec. (a)(9)(A). Pub. L. 95–600, § 402(b)(1), substituted provisions respecting determinations based on the net capital gain for the taxable year under section 1202 of this title, for provisions respecting determinations based on one-half of the net capital gain for the taxable year.

Subsec. (a)(9)(B). Pub. L. 95–600, § 301(b)(2), substituted "the highest rate of tax specified in section 11(b)" for "the sum of the normal tax rate and the surtax rate under section 11" in two places.

Subsec. (a)(9)(D). Pub. L. 95–600, § 421(b)(1), added subsec. (a)(9)(D).

Subsec. (a)(11). Pub. L. 95–618 substituted in subpars. (A) and (C) "oil, gas, and geothermal properties" for "oil and gas properties" wherever appearing and in subpar. (B)(i) "oil, gas, and geothermal wells" for "oil and gas wells", and added subpar. (D).

Subsec. (a). Pub. L. 95–600, §§ 421(b)(2), 701(b)(1)(B), in provision following par. (11) substituted provisions respecting applicability of pars. (3) and (11), for provisions respecting applicability of pars. (1), (3), and (11).

Subsec. (b)(1)(A) to (D). Pub. L. 95–600, § 421(b)(3), substituted provisions respecting computation of adjusted itemized deductions as such itemized deductions are defined by section 63(f) of this title, for provisions respecting computation of adjusted itemized deductions.

Subsec. (b)(1)(E). Pub. L. 95–600, § 701(b)(4), added subsec. (b)(1)(E).

Subsec. (b)(2). Pub. L. 95–600, §§ 421(b)(4), 701(b)(3), substituted provisions setting forth special rules for estates and trusts, in arriving at the amount of adjusted itemized deduction allowable, in the method of determining adjusted gross income, and in the treatment of certain charitable contributions for provisions setting forth special rules for trusts and estates in determining the deduction allowed in arriving at the adjusted gross income.

1977—Subsec. (a)(1). Pub. L. 95–30, § 101(d)(5)(A), substituted "adjusted" for "excess" in heading and text.

Subsec. (a)(10). Pub. L. 95–30, § 402(a)(5), struck out "on-the-job training and" following "Amortization of" in the catchline.

Subsec. (a)(11). Pub. L. 95–30, § 308(a), designated existing provisions as cls. (i) and (ii) of subpar. (B) and added subpars. (A) and (C) and the introductory provisions preceding cl. (i) of subpar. (B).

Subsec. (b). Pub. L. 95–30, § 101(d)(5)(B), (C), substituted "adjusted" for "excess" in the subsection catchline and in the introductory provisions of par. (1) preceding subpar. (A). struck out subpar. (B) of par. (1) relating to the standard deduction, and redesignated subpars. (C), (D), and (E) of par. (1) as (B), (C), and (D), respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(b)(5) provided that: "The amendments made by this subsection [amending subsecs. (a)(1), provision following (a)(11), and (b)(2) of this section and section 58(b) of this title] shall take effect as if included in the amendments made by section 301 of the Tax Reform Act of 1976 [see section 301(g) of Pub. L. 94–455 set out as a note under section 56 of this title]."

For effective date of amendment of subsec. (a)(2) by section 701(f)(3)(D) of Pub. L. 95–600, see section 701(f)(8) of Pub. L. 95–600, set out as an Effective Date note under section 191 of this title.

Amendment of subsec. (a)(9)(A) by section 402(b)(1) of Pub. L. 95–600 applicable to taxable years ending after Oct. 31, 1978, see section 402(b)(1) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 1202 of this title.

Amendment of subsec. (a)(9)(B) by section 301(b)(2) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Amendment of subsec. (a)(9)(D) by section 421(b)(1) of Pub. L. 95–600 applicable to sales and exchanges made after July 26, 1978, in taxable years ending after such date, see section 421(g) of Pub. L. 95–600, set out as an Effective Date note under section 55 of this title.

Amendment of subsec. (a)(11) by Pub. L. 95–618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95–618, set out as an Effective Date of 1978 Amendment note under section 263 of this title.

Amendment of provision following subsecs. (a)(11), (b)(1), (b)(2)(A) by section 421(b)(2), (3), (4) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95–600, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 308(b) of Pub. L. 95–30, as amended by Pub. L. 95–600, title IV, § 422, Nov. 6, 1978, 92 Stat. 2877; Pub. L. 95–618, title IV, § 401, Nov. 9, 1978, 92 Stat. 3201, provided that: "The amendment made by subsection (a) [amending subsec. (a)(11) of this section] shall apply with respect to taxable years beginning after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 55, 56, 58, 691, 703, 1348 of this title.

§ 58. Rules for application of this part

(a) Married individuals filing separate returns

In the case of a married individual who files a separate return for the taxabl year, section 56 shall be applied by substituting $5,000 for $10,000 each place it appears. In the case of a married individual who files a separate return for the taxable year, the amount determined under paragraph (1) of section 55(a) shall be an amount equal to one-half of the amount which would be determined under such paragraph if the amount of the individual's alternative minimum taxable income were multiplied by 2.

(b) Members of controlled groups

In the case of a controlled group of corporations (as defined in section 1563(a)), the $10,000 amount specified in section 56 shall be divided among the component members of such group

in proportion to their respective regular tax deductions (within the meaning of section 56(c)) for the taxable year.

(c) Estates and trusts

In the case of an estate or trust—

(1) the sum of the items of tax preference for any taxable year of the estate or trust shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each,

(2) the $10,000 amount specified in section 56 applicable to such estate or trust shall be reduced to an amount which bears the same ratio to $10,000 as the portion of the sum of the items of tax preference allocated to the estate or trust under paragraph (1) bears to such sum, and

(3) the liability for the tax imposed by section 55 (a) shall be determined as in the case of a married individual filing separately.

[See main edition for text of (d) to (f)]

(g) Tax preferences attributable to foreign sources

[See main edition for text of (1)]

(2) Capital gains and stock options

For purposes of section 56, the items of tax preference set forth in paragraphs (6) and (9) of section 57(a) which are attributable to sources within any foreign country or possession of the United States shall not be taken into account if, under the tax laws of such country or possession—

[See main edition for text of (A) and (B)]

For purposes of this paragraph, preferential treatment is accorded such items which are attributable to a foreign country or possession of the United States if such country or possession imposes no significant amount of tax with respect to such items; except that, for purposes of subparagraph (B), preferential treatment shall be deemed not to be accorded to capital gain recognized on the receipt of property (other than money) in exchange for stock of a corporation which is engaged in the active conduct of a trade or business within one or more foreign countries or possessions if (i) such exchange is described in section 332, 351, 354, 355, 356, or 361, (ii) such exchange is made in the foreign country or possession in which such corporation's business is primarily carried on, (iii) such exchange is not subject to tax by such foreign country or possession because it is regarded under the laws of such country or possession as a transaction in which gain or loss is either not realized or not recognized, and (iv) such gain, if it had been realized and recognized under the laws of such country or possession, would not have been accorded preferential treatment and would have been subject to tax at a rate of at least 28 percent (30 percent if the exchange occurs before January 1, 1979). For purposes of computing the minimum tax, if any, which may be payable on a subsequent transaction involving any property received upon the exchange of stock described in the preceding sentence, the property received shall be treated as having the same basis in the taxpayer's hands immediately after such exchange as such stock had immediately before such exchange.

[See main edition for text of (h)]

[(i) Repealed. Pub. L. 95-600, title IV, § 421(c)(3), Nov. 6, 1978, 92 Stat. 2875]

(As amended Pub. L. 95-600, title IV, §§ 421(c), 423(a), title VII, § 701(b)(2), Nov. 6, 1978, 92 Stat. 2875, 2877, 2898.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 421(c)(1), added provision relating to married individuals filing a separate return.

Subsec. (b). Pub. L. 95-600, § 701(b)(2), substituted provision for division of the amount "among the component members of such group in proportion to their respective regular tax deductions (within the meaning of section 56(c)) for the taxable year" for provision for such division "equally among the component members of such group unless all component members consent (at such time and in such manner as the Secretary prescribes by regulations) to an apportionment plan providing for an unequal allocation of such amount".

Subsec. (c). Pub. L. 95-600, § 421(c)(2), added par. (3).

Subsec. (g)(2). Pub. L. 95-600, § 423(a), added provisions related to preferential treatment not being accorded to capital gain recognized on the receipt of property in exchange for stock.

Subsec. (i). Pub. L. 95-600, § 421(c)(3), struck out subsec. (i), relating to the definition of corporation.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a), (c), (i) by section 421(c)(1), (2), (3) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

Amendment of subsec. (b) by section 701(b)(2) of Pub. L. 95-600 effective as if included in the amendments made by section 301 of the Tax Reform Act of 1976, see section 701(b)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 57 of this title.

Section 423(b) of Pub. L. 95-600 provided that: "The amendment made by this section [amending subsec. (g)(2) of this section] shall take effect on the date of the enactment of this Act [Nov. 6, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 443, 1372 of this title.

Subchapter B—Computation of Taxable Income

Part
IV. Determination of marital status.

AMENDMENTS

1977—Pub. L. 95-30, title I, § 101(e)(3), May 23, 1977, 91 Stat. 135, substituted "Determination of marital status" for "Standard deduction for individuals" in item IV.

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

§ 61. Gross income defined

TERMINATION DATE OF 1978 AMENDMENT

Pub. L. 95-615, § 210(a), Nov. 8, 1978, 92 Stat. 3109, provided that: "Title I of this Act [probably means

sections 1 to 8 of Pub. L. 95-615, see Short Title of 1978 Amendment note under section 1 of this title] (other than sections 4 and 5 thereof) [amending section 167 of this title, enacting provisions set out as notes under sections 1, 61, and 62 of this title, and amending provisions set out as notes under sections 117, 167, and 382 of this title] shall cease to have effect on the day after the date of the enactment of this Act [Nov. 8, 1978]."

FRINGE BENEFIT REGULATIONS

Pub. L. 95-615, § 3, Nov. 8, 1978, 92 Stat. 3097, provided that: "No regulations shall be issued in final form on or after October 1, 1977, and before July 1, 1978, providing for the iclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1954."

Section 3 of Pub. L. 95-615 [this note] to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95-615, set out as a note above.

Pub. L. 95-427, § 1, Oct. 7, 1978, 92 Stat. 996, provided that:

"(a) IN GENERAL.—No fringe benefit regulation shall be issued—

"(1) in final form on or after May 1, 1978, and on or before December 31, 1979, or

"(2) in proposed or final form on or after May 1, 1978, if such regulation has an effective date on or before December 31, 1979.

"(b) DEFINITION OF FRINGE BENEFIT REGULATION.—For purposes of subsection (a), the term 'fringe benefit regulation' means a regulation providing for the inclusion of any fringe benefit in gross income by reason of section 61 of the Internal Revenue Code of 1954."

CANCELLATION OF CERTAIN STUDENT LOANS

Pub. L. 94-455, title XXI, § 2117, Oct. 4, 1976, 90 Stat. 1911, as amended Pub. L. 95-600, title I, § 162, Nov. 6, 1978, 92 Stat. 2810, provided that:

* * * * *

"(c) Effective date.—The provisions of this section shall apply to discharges of indebtedness made before January 1, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 208A, 305, 351, 356, 408, 671, 707, 1101, 6103 of this title.

§ 62. Adjusted gross income defined

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

[See main edition for text of (1) to (13)]

(14) Deduction for certain expenses of living abroad

The deduction allowed by section 913.

Nothing in this section shall permit the same item to be deducted more than once.

(As amended Nov. 8, 1978, Pub. L. 95-615, § 203(b), 92 Stat. 3106.)

AMENDMENTS

1978—Par. (14). Pub. L. 95-615 added par. (14).

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

COMMUTING EXPENSES

Pub. L. 95-615, § 2, Nov. 8, 1978, 92 Stat. 3097, provided that:

"With respect to transportation costs paid or incurred after December 31, 1976, and before April 30, 1978, the application of sections 62, 162, and 262 and of chapters 21, 23, and 24 [sections 3101 et seq., 3301 et seq., and 3401 et seq. of this title] of the Internal Revenue Code of 1954 to transportation expenses in traveling between a taxpayer's residence and place of work shall be determined—

"(1) without regard to Revenue Ruling 76-453 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue Ruling); and

"(2) with full regard to the rules in effect before Revenue Ruling 76-453."

Section 2 of Pub. L. 95-615 [this note] to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95-615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.

Pub. L. 95-427, § 2, Oct. 7, 1978, 92 Stat. 996, provided that:

"With respect to transportation costs paid or incurred after December 31, 1976, and on or before December 31, 1979, the application of sections 62, 162, and 262 and of chapters 21, 23, and 24 [sections 3101 et seq., 3301 et. seq., and 3401 et seq., of this title] of the Internal Revenue Code of 1954 to transportation expenses in traveling between a taxpayer's residence and place of work shall be determined—

"(1) without regard to Revenue Ruling 76-453 (and without regard to any other regulation, ruling, or decision reaching the same result as, or a result similar to, the result set forth in such Revenue Ruling); and

"(2) with full regard to the rules in effect before Revenue Ruling 76-453."

§ 63. Taxable income defined

(a) Corporations

For purposes of this subtitle, in the case of a corporation, the term "taxable income" means gross income minus the deductions allowed by this chapter.

(b) Individuals

For purposes of this subtitle, in the case of an individual, the term "taxable income" means adjusted gross income—

(1) reduced by the sum of—

(A) the excess itemized deductions, and

(B) the deductions for personal exemptions provided by section 151, and

(2) increased (in the case of an individual for whom an unused zero bracket amount computation is provided by subsection (e)) by the unused zero bracket amount (if any).

(c) Excess itemized deductions

For purposes of this subtitle, the term "excess itemized deductions" means the excess (if any) of—

(1) the itemized deductions, over

(2) the zero bracket amount.

(d) Zero bracket amount

For purposes of this subtitle, the term "zero bracket amount" means—

(1) $3,400 in the case of—

(A) a joint return under section 6013, or

(B) a surviving spouse (as defined in section 2(a)),

(2) $2,300 in the case of an individual who is not married and who is not a surviving spouse (as so defined).

(3) $1,700 in the case of a married individual filing a separate return, or

(4) zero in any other case.

(e) Unused zero bracket amount

(1) Individuals for whom computation must be made

A computation for the taxable year shall be made under this subsection for the following individuals:

(A) a married individual filing a separate return where either spouse itemized deductions,

(B) a nonresident alien individual,

(C) a citizen of the United States entitled to the benefits of section 931 (relating to income from sources within possessions of the United States), and

(D) an individual with respect to whom a deduction under section 151(e) is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins.

(2) Computation

For purposes of this subtitle, an individual's unused zero bracket amount for the taxable year is an amount equal to the excess (if any) of—

(A) the zero bracket amount, over

(B) the itemized deductions.

In the case of an individual referred to in paragraph (1)(D), if such individual's earned income (as defined in section 911(b)) exceeds the itemized deductions, such earned income shall be substituted for the itemized deductions in subparagraph (B).

(f) Itemized deductions

For purposes of this subtitle, the term "itemized deductions" means the deductions allowable by this chapter other than—

(1) the deductions allowable in arriving at adjusted gross income, and

(2) the deductions for personal exemptions provided by section 151.

(g) Election to itemize

(1) In general

Unless an individual makes an election under this subsection for the taxable year, no itemized deduction shall be allowed for the taxable year. For purposes of this subtitle, the determination of whether a deduction is allowable under this chapter shall be made without regard to the preceding sentence.

(2) Who may elect

Except as provided in paragraph (3), an individual may make an election under this subsection for the taxable year only if such individual's itemized deductions exceed the zero bracket amount.

(3) Certain individuals treated as electing to itemize

An individual who has an unused zero bracket amount (as determined under subsection (e)(2)) shall be treated as having made an election under this subsection for the taxable year.

(4) Time and manner of election

Any election under this subsection shall be made on the taxpayer's return, and the Secretary shall prescribe the manner of signifying such election on the return.

(5) Change of treatment

Under regulations prescribed by the Secretary, a change of treatment with respect to the zero bracket amount and itemized deductions for any taxable year may be made after the filing of the return for such year. If the spouse of the taxpayer filed a separate return for any taxable year corresponding to the taxable year of the taxpayer, the change shall not be allowed unless, in accordance with such regulations—

(A) the spouse makes a change of treatment with respect to the zero bracket amount and itemized deductions, for the taxable year covered in such separate return, consistent with the change of treatment sought by the taxpayer, and

(B) the taxpayer and his spouse consent in writing to the assessment, within such period as may be agreed on with the Secretary, of any deficiency, to the extent attributable to such change of treatment, even though at the time of the filing of such consent the assessment of such deficiency would otherwise be prevented by the operation of any law or rule of law.

This paragraph shall not apply if the tax liability of the taxpayer's spouse, for the taxable year corresponding to the taxable year of the taxpayer, has been compromised under section 7122.

(h) Marital status

For purposes of this section, marital status shall be determined under section 143.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(a), 91 Stat. 135; Nov. 6, 1978, Pub. L. 95-600, title I, § 101(b), 92 Stat. 2769.)

AMENDMENTS

1978—Pub. L. 95-600 substituted in par. (1), "$3,400" for "$3,200", in par. (2), "$2,300" for "$2,200", and in par. (3), "$1,700" for "$1,600".

1977—Pub. L. 95-30 completely revised the definition of taxable income from one using the concept of a standard deduction and consisting of subsecs. (a) and (b) entitled, respectively, "General rule" and "Individuals electing standard deduction" to a definition using the concepts of zero bracket amounts and excess itemized deductions and consisting of subsecs. (a) to (h) entitled, respectively, "Corporations", "Individuals", "Excess itemized deductions", "Zero bracket amount", "Unused zero bracket amount", "Itemized deductions", "Election to itemize", and "Marital status".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 3, 57, 161, 211, 1034, 3402, 6012, 6014, 6212, 6504 of this title.

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.
85. Unemployment compensation.

AMENDMENTS

1978—Pub. L. 95-600, title I, § 112(c)(1), Nov. 6, 1978, 92 Stat. 2778, added item 85.

§ 72. Annuities; certain proceeds of endowment and life insurance contracts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 46, 50A, 53, 55, 56, 79, 101, 105, 122, 401, 402, 403, 404, 405, 406, 407, 408, 409, 457, 483, 691, 901, 1014, 1023, 1232, 1302, 1304, 1348, 1379, 4973 of this title; title 29 section 1345; title 45 section 7260.

§ 83. Property transferred in connection with performance of services

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 457 of this title.

§ 85. Unemployment compensation

(a) In general

If the sum for the taxable year of the adjusted gross income of the taxpayer (determined without regard to this section and without regard to section 105(d)) and the unemployment compensation exceeds the base amount, gross income for the taxable year includes unemployment compensation in an amount equal to the lesser of—

(1) one-half of the amount of the excess of such sum over the base amount, or

(2) the amount of the unemployment compensation.

(b) Base amount defined

For purposes of this section, the term "base amount" means—

(1) except as provided in paragraphs (2) and (3), $20,000,

(2) $25,000, in the case of a joint return under section 6013, or

(3) zero, in the case of a taxpayer who—

(A) is married at the close of the taxable year (within the meaning of section 143) but does not file a joint return for such year, and

(B) does not live apart from his spouse at all times during the taxable year.

(c) Unemployment compensation defined

For purposes of this section, the term "unemployment compensation" means any amount received under a law of the United States or of a State which is in the nature of unemployment compensation.

(Added Pub. L. 95-600, title I, § 112(a), Nov. 6, 1978, 92 Stat. 2777.)

EFFECTIVE DATE

Section 112(d) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this section and section 6050B of this title] shall apply to payments of unemployment compensation made after December 31, 1978, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6050B of this title.

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.
121. One-time exclusion of gain from sale of principal residence by individual who has attained age 55.
124. Qualified transportation provided by employer.
125. Cafeteria plans.
126. Certain cost-sharing payments.
127. Educational assistance programs.
128. Cross references to other Acts.[1]

AMENDMENTS

1978—Pub. L. 95-618, title II, § 242(b), Nov. 9, 1978, 92 Stat. 3194, redesignated former item 124 as 125 and added item 124.

Pub. L. 95-600, title I, §§ 134(b), 164(c), title IV, § 404(c)(3), title V, § 543(b), Nov. 6, 1978, 92 Stat. 2785, 2814, 2870, 2890, in item 121 substituted "One-time exclusion of gain from sale of principal residence by individual who has attained age 55" for "Gain from sale of exchange of residence of individual who has attained age 65", redesignated former item 124 as 128, and added items 125 to 127.

§ 103. Interest on certain governmental obligations

[See main edition for text of (a)]

(b) Industrial development bonds

[See main edition for text of (1) to (3)]

(4) Certain exempt activities

Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

[See main edition for text of (A) to (F)]

(G) facilities for the furnishing of water for any purpose if—

(i) the water is or will be made available to members of the general public (including electric utility, industrial, agricultural, or commercial users), and

(ii) either the facilities are operated by a governmental unit or the rates for the furnishing or sale of the water have been established or approved by a State or political subdivision thereof, by an agency or instrumentality of the United States, or by a public service or public utility commission or other similar body of any State or political subdivision thereof.

For purposes of subparagraph (E), the local furnishing of electric energy from a facility shall include furnishing solely within the area consisting of a city and 1 contiguous county.

[See main edition for text of (5)]

(6) Exemption for certain small issues

[See main edition for text of (A) to (C)]

(D) $10,000,000 limit in certain cases

At the election of the issuer, made at such time and in such manner as the Secretary shall by regulations prescribe, with respect

[1] So in original. Does not conform to section catchline.

to any issue this paragraph shall be applied—

(I) by substituting "$10,000,000" for "$1,000,000" in subparagraph (A), and

[See main edition for text of (ii), (E) to (H)]

(I) Aggregate amount of capital expenditures where there is urban development action grant

In the case of any issue substantially all of the proceeds of which are to be used to provide facilities with respect to which an urban development action grant has been made under section 119 of the Housing and Community Development Act of 1974, capital expenditures of not to exceed $10,000,000 shall not be taken into account for purposes of applying subparagraph (D)(ii).

(7) Advance refunding of qualified public facilities

(A) In general

Paragraph (1) shall not apply to a refunding issue if substantially all the proceeds of the refunded issue were used to provide a qualified public facility.

(B) Qualified public facility defined

For purposes of subparagraph (A), the term "qualified public facility" means facilities described in subparagraph (C) or (D) of paragraph (4) which are generally available to the general public.

(8) Exception

Paragraphs (4), (5), (6), and (7) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person.

(c) Arbitrage bonds

(1) Subsection (a) (1) or (2) not to apply

Except as provided in this subsection, any arbitrage bond shall be treated as an obligation not described in subsection (a) (1) or (2).

(2) Arbitrage bond

For purposes of this subsection, the term "arbitrage bond" means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly—

(A) to acquire securities (within the meaning of section 165(g)(2) (A) or (B)) or obligations (other than obligations described in subsection (a) (1) or (2)) which may be reasonably expected at the time of issuance of such issue, to produce a yield over the term of the issue which is materially higher (taking into account any discount or premium) than the yield on obligations of such issue, or

[See main edition for text of (B), (3) and (4)]

(5) Student loan incentive payments

Payments made by the Commissioner of Education pursuant to section 438 of the Higher Education Act of 1965 are not to be taken into account, for purposes of paragraph (2)(A), in determining yields on student loan notes.

[See main edition for text of (6)]

(d) Certain irrigation dams

A dam for the furnishing of water for irrigation purposes which has a subordinate use in connection with the generation of electric energy by water shall be treated as meeting the requirements of subsection (b)(4)(G) if—

[See main edition for text of (1) and (2); (e)]

(f) Certain federally guaranteed obligations

Any obligation the payment of interest or principal (or both) of which is guaranteed in whole or in part under title I of the New York City Loan Guarantee Act of 1978 shall, with respect to interest accrued during the period for which such guarantee is in effect, be treated as an obligation not described in subsection (a).

(g) Cross references

For provisions relating to the taxable status of—

(1) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (48 U.S.C. 745).

(2) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1949 (48 U.S.C. 1403).

(3) Certain obligations issued under title I of the Housing Act of 1949, see section 102(g) of title I of such Act (42 U.S.C. 1452(g)).

(24) Exempt-interest dividends.—For treatment of exempt-interest dividends, see section 852(b)(5)(B).

(As amended Aug. 8, 1978, Pub. L. 95-339, title II, § 201(a), 92 Stat. 467; Nov. 6, 1978, Pub. L. 95-600, title III, §§ 331(a), (b), 332(a), 333(a), 334(a), (b), title VII, § 703(j)(1), (q)(1), 92 Stat. 2839-2841, 2941, 2944.)

REFERENCES IN TEXT

Section 119 of the Housing and Community Development Act of 1974, referred to in subsec. (b)(6)(I), is section 119 of Pub. L. 93-383, title I, as added Pub. L. 95-128, title I, § 110(b), Oct. 12, 1977, 91 Stat. 1125, which is classified to section 5318 of Title 42, The Public Health and Welfare.

Section 438 of the Higher Education Act of 1965, referred to in subsec. (c)(5), is section 438 of Pub. L. 89-329, title IV, as added Pub. L. 92-318, title I, § 132E(a), June 23, 1972, 86 Stat. 264, which is classified to section 1087-1 of Title 20, Education.

The New York City Loan Guarantee Act of 1978, referred to in subsec. (f), is Pub. L. 95-339, Aug. 8, 1978, 92 Stat. 460, as amended. Title I of the New York City Loan Guarantee Act of 1978 is classified generally to subchapter II (§ 1251 et seq.) of chapter 27 of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 1521 of Title 31 and Tables.

The Housing Act of 1949, referred to in subsec. (g), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949 is classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of Title 42 and Tables.

CODIFICATION

Section 703(q)(1) of Pub. L. 95-600 directed that "section 438 of the Higher Education Act of 1965" be substituted for "section 2 of the Emergency Insured Student Loan Act of 1969" in subsec. (d)(5). This amendment, however, has been executed to subsec. (c)(5) as the probable intent of Congress.

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 703(j)(1)(A), in par. heading substituted "subsection (a)(1) or (2)" for "subsection (a)(1)".

Subsec. (b)(4). Pub. L. 95-600, §§ 332(a), 333(a), in subpar. (G)(i) inserted reference to electric utility, industrial, agricultural, or commercial users and added subpar. (G)(ii) and provision following subpar. (G)(ii) relating to the local furnishing of electric energy.

Subsec. (b)(6)(D). Pub. L. 95-600, § 331(a), substituted in heading and cl. (i) "$10,000,000" for "$5,000,000".

Subsec. (b)(6)(I). Pub. L. 95-600, § 331(b), added subsec. (b)(6)(I).

Subsec. (b)(7). Pub. L. 95-600, § 334(a), added subsec. (b)(7). Former subsec. (b)(7) redesignated (b)(8).

Subsec. (b)(8). Pub. L. 95-600, § 334(a), (b), redesignated former subsec. (b)(7) as (b)(8) and, as so redesignated, substituted "(6), and (7)" for "and (6)".

Subsec. (c)(1). Pub. L. 95-600, § 703(j)(1)(B), substituted in heading and in text "(a)(1) or (2)" for "(a)(1) or (4)".

Subsec. (c)(2)(A). Pub. L. 95-600, § 703(j)(1)(C), substituted "subsection (a)(1) or (2)" for "subsection (a)(1) or (2) or (4)".

Subsec. (c)(5). Pub. L. 95-600, § 703(j)(1)(D), (q)(1), substituted "section 438 of the Higher Education Act of 1965" for "section 2 of the Emergency Insured Student Loan Act of 1969" and "paragraph (2)(A)" for "subsection (d)(2)(A)". See Codification note above.

Subsec. (d). Pub. L. 95-600, § 703(j)(1)(E), substituted "subsection (b)(4)(G)" for "subsection (c)(4)(G)".

Subsec. (e). Pub. L. 95-339 redesignated the second subsec. (e) as (g).

Subsec. (f). Pub. L. 95-339 added subsec. (f).

Subsec. (g). Pub. L. 95-339 redesignated former second subsec. (e) as (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 201(c) of Pub. L. 95-339 provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years ending after the date of the enactment of this Act [Aug. 8, 1978]."

Section 331(c) of Pub. L. 95-600 provided that:

"(1) The amendments made by subsection (a) [amending subsec. (b)(6)(D) of this section] shall apply to—

"(A) obligations issued after December 31, 1978, in taxable years ending after such date, and

"(B) capital expenditures made after December 31, 1978, with respect to obligations issued before January 1, 1979.

"(2) The amendment made by subsection (b) [amending subsec. (b)(6)(I) of this section] shall apply to—

"(A) obligations issued after September 30, 1979, in taxable years ending after such date, and

"(B) capital expenditures made after September 30, 1979, with respect to obligations issued after such date."

Section 332(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (b)(4) of this section] shall apply to taxable years ending after April 30, 1968, but only with respect to obligations issued after such date."

Section 333(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (b)(4)(G) of this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date."

Section 334(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (b)(7), (8) of this section] shall apply to obligations issued after the date of the enactment of this Act [Nov. 6, 1978]."

Section 703(q)(2) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending subsec. (d)(5) of this section] shall apply with respect to payments made by the Commissioner of Education after December 31, 1976."

Amendment of subsecs. (b)(1), (c)(1), (c)(2)(A), (c)(5), (d), 703(j)(1) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

DISPOSITION OF AMOUNTS GENERATED BY ADVANCE REFUNDING OF CERTAIN GOVERNMENTAL OBLIGATIONS

Section 337 of Pub. L. 95-600 provided that:

"(a) GENERAL RULE.—The payment to a charitable organization or a refund profit held in a trust fund or escrow arrangement, or held by an underwriter or other person under a qualified agreement in accordance with that agreement—

"(1) shall not cause the refunding obligations out of which the refund profit arose to be treated as arbitrage bonds (within the meaning of section 103(c) of the Internal Revenue Code of 1954) and

"(2) may be paid without penalty imposed on the issuer of such obligations.

"(b) RULE FOR GOVERNMENTS WHICH HAVE ALREADY PAID ARBITRAGE PROFITS TO THE UNITED STATES.—In the case of a State or local government which, before January 1, 1977—

"(1) requested in writing a rule by the Internal Revenue Service with respect to the tax consequences of paying refund profit to charitable organizations,

"(2) failed to receive a favorable ruling and did not pay the refund profit to a charitable organization, and

which accounted to the United States for refund profit by direct payment to the United States, or by the purchase of low-interest United States obligations, the Secretary of the Treasury shall pay, out of any amounts in the Treasury not otherwise appropriated, an amount equal to the refund profit for which the State or local government has accounted to the United States. Amounts paid to a State or local government under this subsection shall be distributed to such charitable organizations within 90 days after the date on which the payment is received by the State or local government in the same manner as if the refund profit had not been paid to the United States and met the requirements of subsection (a).

"(c) DEFINITIONS.—For purposes of this section—

"(1) REFUND PROFIT.—The term 'Refund profit' means interest, profit, or other amounts generated by, or arising out of, the advance refunding, before September 24, 1976, of an obligation of a State or local government described in section 103 of such Code.

"(2) CHARITABLE ORGANIZATION—The term 'charitable organization' means an organization described in section 501(c)(3) of such Code and exempt from taxation under section 501(a) of such Code other than an organization described in section 509(a) of such Code.

"(3) QUALIFIED AGREEMENT.—The term 'qualified agreement' means an agreement (whether or not enforceable) which provides for, or contemplates, the payment of refund profit to one or more charitable organizations.

"(4) LOW-INTEREST UNITED STATES OBLIGATIONS.—The term 'low-interest United States obligations' means United States obligations which bear an interest rate lower than the highest rate of interest borne by public debt securities generally available for purchase at the time such obligations were purchased."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 593, 643, 667, 804, 809, 818, 819, 822, 832, 851, 1232, 4940, 4942, 6049, 6362, 7478, 7701 of this title; title 15 sections 77c, 78c; title 16 section 2708; title 46 section 1177

§ 105. Amounts received under accident and health plans

[See main edition for text of (a) to (c)]

(d) Certain disability payments

[See main edition for text of (1) to (3)]

(4) Permanent and total disability defined

For purposes of this subsection, an individual is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to be permanently and totally disabled unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Secretary may require.

(5) Special rules for married couples

(A) Married couple must file joint return

Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the exclusion provided by this subsection shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

(B) Application of paragraphs (2) and (3)

In the case of a joint return—

(i) paragraph (2) shall be applied separately with respect to each spouse, but

(ii) paragraph (3) shall be applied with respect to their combined adjusted gross income.

(C) Determination of marital status

For purposes of this subsection, marital status shall be determined under section 143(a).

(D) Joint return defined

For purposes of this subsection, the term "joint return" means the joint return of a husband and wife made under section 6013.

(6) Coordination with section 72

In the case of an individual described in subparagraphs (A) and (B) of paragraph (1), for purposes of section 72 the annuity starting date shall not be deemed to occur before the beginning of the taxable year in which the taxpayer attains age 65, or before the beginning of an earlier taxable year for which the taxpayer makes an irrevocable election not to seek the benefits of this subsection for such year and all subsequent years.

[(7) Redesignated (6)]

[See main edition for text of (e) to (g)]

(h) Amount paid to highly compensated individuals under a discriminatory self-insured medical expense reimbursement plan

(1) In general

In the case of amounts paid to a highly compensated individual under a self-insured medical reimbursement plan which does not satisfy the requirements of paragraph (2) for a plan year, subsection (b) shall not apply to such amounts to the extent they constitute an excess reimbursement of such highly compensated individual.

(2) Prohibition of discrimination

A self-insured medical reimbursement plan satisfies the requirements of this paragraph only if—

(A) the plan does not discriminate in favor of highly compensated individuals as to eligibility to participate; and

(B) the benefits provided under the plan do not discriminate in favor of participants who are highly compensated individuals.

(3) Nondiscriminatory eligibility classifications

(A) In general

A self-insured medical reimbursement plan does not satisfy the requirements of subparagraph (A) of paragraph (2) unless such plan benefits—

(i) 70 percent or more of all employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all employees are eligible to benefit under the plan; or

(ii) such employees as qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of highly compensated participants.

(B) Exclusion of certain employees

For purposes of subparagraph (A), there may be excluded from consideration—

(i) employees who have not completed 3 years of service;

(ii) employees who have not attained age 25;

(iii) part-time or seasonal employees;

(iv) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and one or more employers which the Secretary finds to be a collective bargaining agreement, if accident and health benefits were the subject of good faith bargaining between such employee representatives and such employer or employers; and

(v) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(b)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(4) Nondiscriminatory benefits

A self-insured medical reimbursement plan does not meet the requirements of subparagraph (B) of paragraph (2) unless all benefits provided for participants who are highly compensated individuals are provided for all other participants.

(5) Highly compensated individual defined

For purposes of this subsection, the term "highly compensated individual" means an individual who is—

(A) one of the 5 highest paid officers,

(B) a shareholder who owns (with the application of section 318) more than 10 per-

cent in value of the stock of the employer, or

(C) among the highest paid 25 percent of all employees (other than employees described in paragraph (3)(B) who are not participants).

(6) Self-insured medical reimbursement plan

The term "self-insured medical reimbursement plan" means a plan of an employer to reimburse employees for expenses referred to in subsection (b) for which reimbursement is not provided under a policy of accident and health insurance.

(7) Excess reimbursement of highly compensated individual

For purposes of this section, the excess reimbursement of a highly compensated individual which is attributable to a self-insured medical reimbursement plan is—

(A) in the case of a benefit available to a highly compensated individual but not to a broad cross-section of employees, the amount reimbursed under the plan to the employee with respect to such benefit, and

(B) in the case of benefits (other than benefits described in subparagraph (A) paid to a highly compensated individual by a plan which fails to satisfy the requirements of paragraph (2), the total amount reimbursed to the highly compensated individual for the plan year multiplied by a fraction—

(i) the numerator of which is the total amount reimbursed to all participants who are highly compensated individuals under the plan for the plan year, and

(ii) the denominator of which is the total amount reimbursed to all employees under the plan for such plan year.

In determining the fraction under subparagraph (B), there shall not be taken into account any reimbursement which is attributable to a benefit described in subparagraph (A).

(8) Certain controlled groups

All employees who are treated as employed by a single employer under subsection (b) or (c) of section 414 shall be treated as employed by a single employer for purposes of this section.

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(10) Time of inclusion

Any amount paid for a plan year that is included in income by reason of this subsection shall be treated as received or accrued in the taxable year of the participant in which the plan year ends.

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 366(a), title VII, § 701(c)(1), 92 Stat. 2855, 2899.)

AMENDMENTS

1978—Subsec. (d)(4). Pub. L. 95-600, § 701 (c)(1), redesignated former par. (5) as (4). Former par. (4) redesignated (5)(A) and (C).

Subsec. (d)(5). Pub. L. 95-600, § 701(c)(1), added par. heading and subpar. (B), redesignated former par. (4) as subpars. (A) and (C), inserting subpar. (C) heading and substituting "section 143(a)" for "section 143"; and redesignated former par. (6) as subpar. (D), inserting "defined" in the heading.

Subsec. (d)(6). Pub. L. 95-600, § 701(c)(1), redesignated former par. (7) as (6). Former par. (6) redesignated (5)(D).

Subsec. (d)(7). Pub. L. 95-600, § 701(c)(1), redesignated former par. (7) as (6).

Subsec. (h). Pub. L. 95-600, § 366(a), added subsec. (h).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 366(b) of Pub. L. 95-600 provided that: "The amendments made by this section [adding subsec. (h) of this section] shall apply to taxable years beginning after December 31, 1979."

Section 701(c)(3) of Pub. L. 95-600 provided that:

"(A) The amendments made by paragraphs (1) and (2)(A) [amending subsec. (d) of this section and a provision set out as a note under this section] shall take effect as if included in section 105(d) of the Internal Revenue Code of 1954 as such section was amended by section 505(a) of the Tax Reform Act of 1976 [subsec. (d) of this section].

"(B) The amendments made by paragraph (2)(B) [amending provisions set out as notes under this section] shall take effect as if included in section 301 of the Tax Reduction and Simplification Act of 1977 [Pub. L. 95-30, title III, § 301, May 23, 1977, 91 Stat. 152]."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 505(f) of Pub. L. 94-455, as added by Pub. L. 95-30, title III, § 301(a), May 23, 1977, 91 Stat. 151, provided that: "The amendment made by subsection (a) [amending subsec. (d) of this section] shall apply to taxable years beginning after December 31, 1976."

REVOCATION OF ELECTION

Pub. L. 95-30, title III, § 301(c), May 23, 1977, 91 Stat. 151, as amended by Pub. L. 95-600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900, provided that: "Any election made under section 105(d)(6) of the Internal Revenue Code of 1954 or under section 505(d) of the Tax Reform Act of 1976 [set out as a note below] for a taxable year beginning in 1976 may be revoked (in such manner as may be prescribed by regulations) at any time before the expiration of the period for assessing a deficiency with respect to such taxable year (determined without regard to subsection (d) of this section) [set out as a note below]."

PERIOD FOR ASSESSING DEFICIENCY

Pub. L. 95-30, title III, § 301(d), May 23, 1977, 91 Stat. 152, provided that: "In the case of any revocation made under subsection (c) [set out as a note above], the period for assessing a deficiency with respect to any taxable year affected by the revocation shall not expire before the date which is 1 year after the date of the making of the revocation, and, notwithstanding any law or rule of law, such deficiency, to the extent attributable to such revocation, may be assessed at any time during such 1-year period."

EFFECTIVE DATE OF CHANGES IN EXCLUSION FOR SICK PAY

Pub. L. 95-30, title III, § 301(e), May 23, 1977, 91 Stat. 152, as amended by Pub. L. 95-600, title VII, § 701(c)(2)(B), Nov. 6, 1978, 92 Stat. 2900, provided that:

"The amendments made by this section [enacting and amending notes under this section] shall take effect on October 4, 1976, but shall not apply—

"(1) with respect to any taxpayer who makes or has made an election under section 105(d)(6) of the Internal Revenue Code of 1954 or under section

505(d) of the Tax Reform Act of 1976 [set out as a note below] (as such sections were in effect before the enactment of this Act [May 23, 1977]) for a taxable year beginning in 1976, if such election is not revoked under subsection (c) of this section [set out as a note above], and

"(2) with respect to any taxpayer (other than a taxpayer described in paragraph (1)) who has an annuity starting date at the beginning of a taxable year beginning in 1976 by reason of the amendments made by section 505 of the Tax Reform Act of 1976 [amending subsec. (d) of this section and section 104 of this title and enacting provisions set out as notes under this section] (as in effect before the enactment of this Act [May 23, 1977]), unless such person elects (in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have such amendments apply."

SPECIAL RULE FOR EXISTING PERMANENT AND TOTAL DISABILITY CASES

Section 505(c) of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, § 301(b)(1), (2), May 23, 1977, 91 Stat. 151; Pub. L. 95-600, title VII, § 701(c)(2)(A), Nov. 6, 1978, 92 Stat. 2900, provided that:

"In the case of any individual who—

"(1) retired before January 1, 1977,

"(2) either retired on disability or was entitled to retire on disability, and

"(3) on January 1, 1976, or January 1, 1977, was permanently and totally disabled (within the meaning of section 105(d)(4) of the Internal Revenue Code of 1954) [subsec. (d)(4) of this section],

such individual shall be deemed to have met the requirements of section 105(d)(1)(B) of such Code (as amended by subsection (a) of this section)."

SPECIAL RULE FOR COORDINATION WITH SECTION 72 OF THIS TITLE

Section 505(d) of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, § 301(b)(3) to (5), May 23, 1977, 91 Stat. 151, provided that:

"In the case of an individual who—

"(1) retired on disability before January 1, 1977, and

"(2) on December 31, 1975, or December 31, 1976, was entitled to exclude any amount with respect to such retirement disability from grss income under section 105(d) of the Internal Revenue Code of 1954,

for purposes of section 72 the annuity starting date shall not be deemed to occur before the beginning of the taxable year in which the taxpayer attains age 65, or before the beginning of an earlier taxable year for which the taxpayer makes an irrevocable election not to seek the benefits of such section 105(d) for such year and all subsequent years."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 85, 403, 7701 of this title.

§ 116. Partial exclusion of dividends received by individuals

[See main edition for text of (a)]

(b) Certain dividends excluded

Subsection (a) shall not apply to any dividend from—

(1) a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations); or

(2) a real estate investment trust which, for the taxable year of the trust in which the dividend is paid, qualifies under part II of subchapter M (sec. 856 and following).

[See main edition for text of (c) and (d)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title X, § 1053(d)(1), 90 Stat. 1649.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455, § 1053(d)(1), struck out par. (1), relating to a corporation organized under the China Trade Act, 1922, and redesignated pars. (2) and (3) as (1) and (2), respectively.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1053(e) of Pub. L. 94-455 provided that: "The amendments made by subsections (a) and (b) [enacting subsec. (c) of section 941 of this title and amending section 943 of this title] shall apply with respect to taxable years beginning after December 31, 1975. The amendments made by subsections (c) and (d) [amending sections 116(b), 1504(b)(5), 6072(e) and 6091(b)(2)(B) of this title, and repealing sections 941-943 of this title] shall apply with respect to taxable years beginning after December 31, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 584, 642, 643, 702, 854, 857, 1375, 1394 of this title.

§ 117. Scholarships and fellowship grants

NATIONAL RESEARCH SERVICE AWARDS

Pub. L. 95-600, title I, § 161(b), Nov. 6, 1978, 92 Stat. 2810, provided that:

"(1) GENERAL RULE.—Any amount paid to, or on behalf of, an individual from appropriated funds as a national research service award under section 472 of the Public Health Service Act [section 289*l*-1 of Title 42, The Public Health and Welfare] shall be treated as a scholarship or fellowship grant under section 117 of the Internal Revenue Code of 1954.

"(2) EFFECTIVE DATE.—The provisions of subsection (b) shall apply to awards made during calendar years 1974 through 1979."

SCHOLARSHIP PROGRAMS FOR MEMBERS OF THE UNIFORMED SERVICES

Pub. L. 93-483, § 4, Oct. 26, 1974, 88 Stat. 1458, as amended Pub. L. 94-455, title XXI, § 2130, Oct. 4, 1976, 90 Stat. 1922; Pub. L. 95-171, § 5, Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95-600, title I, § 161(a), Nov. 6, 1978, 92 Stat. 2810; Pub. L. 95-615, title I, § 6, Nov. 8, 1978, 92 Stat. 3098, provided that:

* * * * * *

"(c) Effective Date.—The provisions of this section shall apply with respect to amounts received during calendar years 1973, 1974, and 1975, and, in the case of a member of a uniformed service receiving training after 1975 and before 1980 in programs described in subsection (a), with respect to amounts received after 1975 and before 1984."

[Section 6 of Pub. L. 95-615, which reenacted § 4(c) of Pub. L. 93-483 without change, to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95-615, set out as a note under section 61 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 74, 127, 1441, 4941 of this title.

§ 118. Contributions to the capital of a corporation

[See main edition for text of (a)]

(b) Contributions in aid of construction

(1) General rule

For purposes of this section, the term "contribution to the capital of the taxpayer" includes any amount of money or other property received from any person (whether or not a shareholder) by a regulated public utility which provides electric energy, gas (through a local distribution system or transportation by pipeline), water, or sewerage disposal services if—

[See main edition for text of (A)]

(B) where the contribution is in property which is other than electric energy, gas, steam, water, or sewerage disposal facilities, such amount meets the requirements of the expenditure rule of paragraph (2), and

[See main edition for text of (C)]

(2) Expenditure rule

An amount meets the requirements of this paragraph if—

(A) an amount equal to such amount is expended for the acquisition or construction of tangible property described in section 1231(b)—

(i) which was the purpose motivating the contribution, and

(ii) which is used predominantly in the trade or business of furnishing electric energy, gas, steam, water, or sewerage disposal services,

[See main edition for text of (B) and (C)]

(3) Definitions

For purposes of this section—

(A) Contribution in aid of construction

The term "contribution in aid of construction" shall be defined by regulations prescribed by the Secretary; except that such term shall not include amounts paid as customer connection fees (including amounts paid to connect the customer's line to an electric line, a gas main, a steam line, or a main water or sewer line and amounts paid as service charges for starting or stopping services).

[See main edition for text of (B)]

(C) Regulated public utility

The term "regulated public utility" has the meaning given such term by section 7701(a)(33); except that such term shall not include any such utility which is not required to provide electric energy, gas, water, or sewerage disposal services to members of the general public (including in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public) in its service area.

[See main edition for text of (4); (c)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 364(a), 92 Stat. 2854.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 364(a)(1), (2), substituted in provisions preceding subpar. (A) "electric energy, gas (through a local distribution system or transportation by pipeline), water," for "water" and in subpar. (B) "electric energy, gas, steam, water," for "water".

Subsec. (b)(2)(A)(ii). Pub. L. 95-600, § 364(a)(3), substituted "electric energy, gas, steam, water," for "water".

Subsec. (b)(3)(A). Pub. L. 95-600, § 364(a)(4), substituted "line to an electric line, a gas main, a steam line, or a main water or sewer line" for "property to a main water or sewer line".

Subsec. (b)(3)(C). Pub. L. 95-600, § 364(a)(5), substituted "electric energy, gas, water," for "water" and inserted "(including in the case of a gas transmission utility, the provision of gas services by sale for resale to the general public)" following "members of the general public".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 364(b) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (b)(1), (b)(1)(B), (b)(2)(A)(ii), (b)(3)(A), (b)(3)(C) of this section] shall apply to contributions made after January 31, 1976."

§ 119. Meals or lodging furnished for the convenience of the employer

(a) Meals and lodging furnished to employee, his spouse, and his dependents pursuant to employment

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the business premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

(b) Special rules

For purposes of subsection (a)—

(1) Provisions of employment contract or state statute not to be determinative

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

(2) Certain factors not taken into account with respect to meals

In determining whether meals are furnished for the convenience of the employer, the fact that a charge is made for such meals, and the fact that the employee may accept or decline such meals, shall not be taken into account.

(3) Certain fixed charges for meals

(A) In general

If—

(i) an employee is required to pay on a periodic basis a fixed charge for his meals, and

(ii) such meals are furnished by the employer for the convenience of the employer,

there shall be excluded from the employee's gross income an amount equal to such fixed charge.

(B) Application of subparagraph (A)

Subparagraph (A) shall apply—

(i) whether the employee pays the fixed charge out of his stated compensation or out of his own funds, and

(ii) only if the employee is required to make the payment whether he accepts or declines the meals.

(As amended Oct. 7, 1978, Pub. L. 95-427, § 4(a), 92 Stat. 997; Nov. 8, 1978, Pub. L. 95-615, title II, § 205, 92 Stat. 3107.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-615 designated existing provisions as subsec. (a), added subsec. (a) heading, and substituted "furnished to him, his spouse, or any of his dependents by or on behalf of his employer for the convenience of the employer" for "furnished to him by his employer for the convenience of the employer".

Pub. L. 95-427 added provisions relating to factors not taken into account with respect to meals and certain fixed charges for meals.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95-427 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to taxable years beginning after December 31, 1953, and ending after August 16, 1954."

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

TREATMENT OF CERTAIN STATUTORY SUBSISTENCE ALLOWANCES OR SUBSISTENCE ALLOWANCES NEGOTIATED IN ACCORDANCE WITH STATE LAW RECEIVED BY STATE POLICE OFFICERS BEFORE JANUARY 1, 1978

Section 3 of Pub. L. 95-427 provided that:

"(a) GENERAL RULE.—If—

"(1) an individual who was employed as a State police officer received a statutory subsistence allowance or a subsistence allowance negotiated in accordance with State law while so employed,

"(2) such individual elects, on or before April 15, 1979, and in such manner and form as the Secretary of the Treasury may prescribe, to have this section apply to such allowance, and

"(3) this section applies to such allowance,

then, for purposes of the Internal Revenue Code of 1954, such allowance shall not be included in such individual's gross income.

"(b) ALLOWANCES TO WHICH SECTION APPLIES.—For purposes of this section, this section applies to any statutory subsistence allowance or subsistence allowance negotiated in accordance with State law which was received—

"(1) after December 31, 1969, and before January 1, 1977, to the extent such individual did not include such allowance in gross income on his income tax return for the taxable year in which such allowance was received, or

"(2) during the calendar year 1977.

"(c) OTHER DEFINITIONS.—For purposes of this section—

"(1) STATE POLICE OFFICER.—The term 'State police officer' means any police officer (including a highway patrolman) employed by a State (or the District of Columbia) on a full-time basis with the power to arrest.

"(2) INCOME TAX RETURN.—The term 'income tax return' means the return of the taxes imposed by subtitle A of the Internal Revenue Code of 1954. If an individual filed before November 29, 1977, an amended return for any taxable year, such amended return shall be treated as the return for such taxable year.

"(d) LIMITATION ON DEDUCTION.—If any individual receives a subsistence allowance which is excluded from gross income under subsection (a), no deduction shall be allowed under any provision of chapter 1 of the Internal Revenue Code of 1954 for expenses in respect of which he has received such allowance, except to the extent that such expenses exceed the amount excludable from gross income under subsection (a) and the excess is otherwise allowed as a deduction under such chapter 1.

"(e) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from the application of this section is prevented at any time on or before April 15, 1979, by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of this section) may, nevertheless, be made or allowed if claim therefor is filed on or before April 15, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 280A, 911, 913, 1402 of this title; title 42 section 411.

§ 120. Amounts received under qualified group legal services plans

EFFECTIVE DATE

Section 2134(e) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 703(b)(1), Nov. 6, 1978, 92 Stat. 2939, provided that:

* * * * *

"(2) Notice requirement.—For purposes of section 120(d)(7) of the Internal Revenue Code of 1954, [subsec. (d)(7) of this section], the time prescribed by the Secretary of the Treasury by regulations for giving the notice required by section 120(c)(4) of such Code [subsec. (c)(4) of this section] shall not expire before the 90th day after the day on which regulations prescribed under such section 120(c)(4) [subsec. (c)(4) of this section] first become final.

* * * * *

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 501, 3121, 3306 of this title; title 42 section 409.

§ 121. One-time exclusion of gain from sale of principal residence by individual who has attained age 55

(a) General rule

At the election of the taxpayer, gross income does not include gain from the sale or exchange of property if—

(1) the taxpayer has attained the age of 55 before the date of such sale or exchange, and

(2) during the 5-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as his principal residence for periods aggregating 3 years or more.

(b) Limitations

(1) Dollar limitation

The amount of the gain excluded from gross income under subsection (a) shall not exceed $100,000 ($50,000 in the case of a separate return by a married individual).

(2) Application to only 1 sale or exchange

Subsection (a) shall not apply to any sale or exchange by the taxpayer if an election by the taxpayer or his spouse under subsection (a) with respect to any other sale or exchange is in effect.

(3) Additional election if prior sale was made on or before July 26, 1978

In the case of any sale or exchange after July 26, 1978, this section shall be applied by not taking into account any election made with respect to a sale or exchange on or before such date.

[See main edition for text of (c)]

(d) Special rules

[See main edition for text of (1)]

(2) Property of deceased spouse

For purposes of this section, in the case of an unmarried individual whose spouse is deceased on the date of the sale or exchange of property, if—

(A) the deceased spouse (during the 5-year period ending on the date of the sale or exchange) satisfied the holding and use requirements of subsection (a)(2) with respect to such property, and

[See main edition for text of (B)]

then such individual shall be treated as satisfying the holding and use requirements of subsection (a)(2) with respect to such property.

[See main edition for text of (3) and (4)]

(5) Property used in part as principal residence

In the case of property only a portion of which, during the 5-year period ending on the date of the sale or exchange, has been owned and used by the taxpayer as his principal residence for periods aggregating 3 years or more, this section shall apply with respect to so much of the gain from the sale or exchange of such property as is determined, under regulations prescribed by the Secretary, to be attributable to the portion of the property so owned and used by the taxpayer.

[See main edition for text of (6) and (7)]

(8) Property acquired after involuntary conversion

If the basis of the property sold or exchanged is determined (in whole or in part) under subsection (b) of section 1033 (relating to basis of property acquired through involuntary conversion), then the holding and use by the taxpayer of the converted property shall be treated as holding and use by the taxpayer of the property sold or exchanged.

(As amended Pub. L. 95-600, title IV, § 404(a)-(c)(2), Nov. 6, 1978, 92 Stat. 2869, 2870.)

PRIOR PROVISIONS

A prior section 121, acts Aug. 16, 1954, ch. 736, 68A Stat. 39; Aug. 1, 1956, ch. 837, title V, § 501(t), 70 Stat. 885; June 17, 1957, Pub. L. 85-56, title XXII, § 2201(25), 71 Stat. 160; Sept. 2, 1958, Pub. L. 85-857, § 13(t), 72 Stat. 1266; renumbered § 122, Feb. 26 1964, Pub. L. 88-272, title II, § 206(a), 78 Stat 38; renumbered § 123, Mar. 8, 1966, Pub. L. 89-365, § 1(a)(1), 80 Stat. 32; renumbered § 124, Dec. 30, 1969, Pub. L. 91-172, title IX, § 901(a), 83 Stat. 709; amended Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(21), 90 Stat. 1766, which related to cross references, was renumbered section 128 of this title.

AMENDMENTS

1978—Pub. L. 95-600, § 404(a), in the section catchline substituted "One-time exclusion of gain from sale of principal residence by individual who has attained age 55" for "Gain from sale or exchange of residence of individual who has attained age 65".

Subsec. (a). Pub. L. 95-600, § 404(a), substituted "55" for "65", "5-year" for "8-year", and "3 years" for "5 years".

Subsec. (b). Pub. L. 95-600, § 404(a), in par. (1) substituted provisions respecting dollar limitations for amount of gain for provisions setting forth applicable limitations where the adjusted sales price exceeds $35,000 and added par. (3).

Subsec. (d)(2). Pub. L. 95-600, § 404(c)(1), substituted "5-year period" for "8-year period".

Subsec. (d)(5). Pub. L. 95-600, § 404(c)(2), substituted "5-year period" for "8-year period" and "3 years" for "5 years".

Subsec. (d)(8). Pub. L. 95-600, § 404(b), added subsec. (d)(8).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 404(d)(1) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (a), (b), (d)(2), (5) of this section and sections 1033(g)(3), 1034(k), 1038(e)(1)(A), 1250(d)(7)(B), and 6012(c) of this title] shall apply to sales or exchanges after July 26, 1978, in taxable years ending after such date."

TRANSITIONAL RULE IN CASE OF SALE OR EXCHANGE OF RESIDENCE BEFORE JULY 26, 1981

Section 404(d)(2) of Pub. L. 95-600 provided that: "In the case of a sale or exchange of a residence before July 26, 1981, a taxpayer who has attained age 65 on the date of such sale or exchange may elect to have section 121 of the Internal Revenue Code of 1954 applied by substituting '8-year period' for '5-year period' and '5 years' for '3 years' in subsections (a), (d)(2), and (d)(5) of such section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1034, 1038, 1250, 6012 of this title.

§ 122. Certain reduced uniformed services retirement pay

PRIOR PROVISIONS

A prior section 122 (see Prior Provisions note set out under section 121 of this title) was renumbered 128.

§ 123. Amounts received under insurance contracts for certain living expenses

PRIOR PROVISIONS

A prior section 123 (see Prior Provisions note set out under section 121 of this title) was renumbered 128.

§ 124. Qualified transportation provided by employer

(a) General rule

Gross income of an employee does not include the value of qualified transportation provided

by the employer between the employee's residence and place of employment.

(b) Qualified transportation

For purposes of this section, the term "qualified transportation" means transportation in a commuter highway vehicle (as defined in section 46(c)(6)(B) but without regard to clause (iii) or (iv) thereof).

(c) Additional requirements

Subsection (a) does not apply to the value of transportation provided by an employer unless—

(1) such transportation is provided under a separate written plan of the employer which does not discriminate in favor of employees who are officers, shareholders, or highly compensated employees, and

(2) the plan provides that the value of such transportation is provided in addition to (and not in lieu of) any compensation otherwise payable to the employee.

(d) Definitions

For purposes of this section—

(1) Provided by the employer

Transportation shall be considered to be provided by an employer if the transportation is furnished in a commuter highway vehicle (described in subsection (b)) operated by or for the employer.

(2) Employee

The term "employee" does not include an individual who is an employee (within the meaning of section 401 (c)(1).

(e) Effective date

Subsection (a) applies with respect to qualified transportation provided in taxable years beginning after December 31, 1978, and before January 1, 1986.

(Added Pub. L. 95-618, title II, § 242(a), Nov. 9, 1978, 92 Stat. 3193.)

PRIOR PROVISIONS

A prior section 124 (see Prior Provisions note set out under section 121 of this title) was renumbered 128.

TRANSITION RULE

Section 242(c) of Pub. L. 95-618 provided that: "The plan requirements of section 124(c) of the Internal Revenue Code of 1954 shall be considered to be met with respect to transportation provided before July 1, 1979, if there is a plan meeting such requirements of the employer in effect on that date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3401 of title.

§ 125. Cafeteria plans

(a) In general

Except as provided in subsection (b), no amount shall be included in the gross income of a participant in a cafeteria plan solely because, under the plan, the participant may choose among the benefits of the plan.

(b) Exception for highly compensated participants where plan is discriminatory

(1) In general

In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Year of inclusion

For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) shall be treated as received or accrued in the participant's taxable year in which the plan year ends.

(c) Discrimination as to benefits or contributions

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where nontaxable benefits and total benefits (or employer contributions allocable to nontaxable benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria plan defined

For purposes of this section—

(1) In general

The term "cafeteria plan" means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among two or more benefits.

The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits.

(2) Deferred compensation plans excluded

The term "cafeteria plan" does not include any plan which provides for deferred compensation.

(e) Highly compensated participant and individual defined

For purposes of this section—

(1) Highly compensated participant

The term "highly compensated participant" means a participant who is—

(A) an officer,

(B) a shareholder owning more than 5 percent of the voting power or value of all classes of stock of the employer,

(C) highly compensated, or

(D) a spouse or dependent (within the meaning of section 152) of an individual described in subparagraph (A), (B), or (C).

(2) Highly compensated individual

The term "highly compensated individual" means an individual who is described in subparagraphs (A), (B), (C), or (D) of paragraph (1).

(f) Nontaxable benefit defined

For purposes of this section, the term "nontaxable benefit" means any benefit which, with the application of subsection (a), is not includible in the gross income of the employee.

(g) Special rules

(1) Collectively bargained plan not considered discriminatory

For purposes of this section, a plan shall not be treated as discriminatory if the plan is maintained under an agreement which the Secretary finds to be a collective bargaining

agreement between employee representatives and one or more employers.

(2) Health benefits

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan which provides health benefits shall not be treated as discriminatory if—

(A) contributions under the plan on behalf of each participant include an amount which—

(i) equals 100 percent of the cost of the health benefit coverage under the plan of the majority of the highly compensated participants similarly situated, or

(ii) equals or exceeds 75 percent of the cost of the health benefit coverage of the participant (similarly situated) having the highest cost health benefit coverage under the plan, and

(B) contributions or benefits under the plan in excess of those described in subparagraph (A) bear a uniform relationship to compensation.

(3) Certain participation eligibility rules not treated as discriminatory

For purposes of subparagraph (A) of subsection (b)(1), a classification shall not be treated as discriminatory if the plan—

(A) benefits a group of employees described in subparagraph (B) of section 410(b)(1), and

(B) meets the requirements of clauses (i) and (ii):

(i) No employee is required to complete more than 3 years of employment with the employer or employers maintaining the plan as a condition of participation in the plan, and the service requirement for each employee is the same.

(ii) Any employee who has satisfied the employment requirement of clause (i) and who is otherwise entitled to participate in the plan commences participation no later than the first day of the first plan year beginning after the date the service requirement was satisfied unless the employee was separated from service before the first day of that plan year.

(4) Certain controlled groups

All employees who are treated as employed by a single employer under subsection (b) or (c) of section 414 shall be treated as employed by a single employer for purposes of this section.

(h) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(Added Pub. L. 95–600, title I, § 134(a), Nov. 6, 1978, 92 Stat. 2783.)

PRIOR PROVISIONS

A prior section 125 (see Prior Provisions note set out under section 121 of this title) was renumbered 128.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 134(c) of Pub. L. 95–600 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978."

§ 126. Certain cost-sharing payments

(a) General rule

Gross income does not include the excludable portion of payments received under—

(1) The rural clean water program authorized by section 208(j) of the Federal Water Pollution Control Act (33 U.S.C. 1288(j)).

(2) The rural abandoned mine program authorized by section 406 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1236).

(3) The water bank program authorized by the Water Bank Act (16 U.S.C. 1301 et seq.).

(4) The emergency conservation measures program authorized by title IV of the Agricultural Credit Act of 1978.

(5) The agricultural conservation program authorized by the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590a).

(6) The great plains conservation program authorized by section 16 of the Soil Conservation and Domestic Policy Act (16 U.S.C. 590p(b)).

(7) The resource conservation and development program authorized by the Bankhead-Jones Farm Tenant Act and by the Soil Conservation and Domestic Allotment Act (7 U.S.C. 1010; 16 U.S.C. 590a et seq.).

(8) The forestry incentives program authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(9) Any small watershed program administered by the Secretary of Agriculture which is determined by the Secretary of the Treasury to be substantially similar to the type of programs described in paragraphs (1) through (8).

(10) Any State program under which payments are made to individuals primarily for the purpose of conserving soil, protecting or restoring the environment, improving forests, or providing a habitat for wildlife.

(b) Excludable portion

For purposes of this section, the term "excludable portion" means that portion (or all) of a payment made to any person under any program described in subsection (a) which—

(1) is determined by the Secretary of Agriculture to be made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife, and

(2) is determined by the Secretary of the Treasury as not increasing substantially the annual income derived from the property.

(c) Application with other sections

No deduction or credit allowable under any other provision of this chapter shall be allowed with respect to any expenditure made with the use of payments described in subsection (a) or with respect to any property acquired with any payment described in subsection (a) (to the extent that the basis is allocable to the use of such payments). Notwithstanding any provision of section 1016 to the contrary, no adjustment to basis shall be made with respect to property acquired through the use of such payments, to the extent that such adjustment would reflect the amount of such payment.

(Added Pub. L. 95-600, title V, § 543(a), Nov. 6, 1978, 92 Stat. 2888.)

REFERENCES IN TEXT

The Water Bank Act, referred to in subsec. (a)(3), is Pub. L. 91-559, Dec. 19, 1970, 84 Stat. 1468, as amended, which is classified generally to chapter 29 (§ 1301 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 16 and Tables.

The Agricultural Credit Act of 1978, referred to in subsec. (a)(4), is Pub. L. 95-334, Aug. 4, 1978, 92 Stat. 420. Title IV of the Agricultural Credit Act of 1978 is classified generally to chapter 42 (§ 2201 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

The Soil Conservation and Domestic Allotment Act, referred to in subsec. (a)(5) and (7), is act Apr. 27, 1935, ch. 85, 49 Stat. 163, as amended, which is classified generally to chapter 3B (§ 590a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 590q of Title 16 and Tables.

The Bankhead-Jones Farm Tenant Act, referred to in subsec. (a)(7), is act July 22, 1937, ch. 517, 50 Stat. 522, as amended, which is classified generally to chapter 33 (§ 1000 et seq) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1000 of Title 7 and Tables.

PRIOR PROVISIONS

A prior section 126 (see Prior Provisions note set out under section 121 of this title) was renumbered 128.

EFFECTIVE DATE

Section 543(d) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this section and section 1255 of this title] shall apply with respect to grants made under the programs after September 30, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1255 of this title.

§ 127. Educational assistance programs

(a) General rule

Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(b) Educational assistance program

(1) In general

For purposes of this section an educational assistance program is a separate written plan of an employer for the exclusive benefit of his employees to provide such employees with educational assistance. The program must meet the requirements of paragraphs (2) through (6) of this subsection.

(2) Eligibility

The program shall benefit employees who qualify under a classification set up by the employer and found by the Secretary not to be discriminatory in favor of employees who are officers, owners, or highly compensated, or their dependents. For purposes of this paragraph, there shall be excluded from consideration employees not included in the program who are included in a unit of employees covered by an agreement which the Secretary of Labor finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between such employee representatives and such employer or employers.

(3) Principal shareholders or owners

Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be provided for the class of individuals who are shareholders or owners (or their spouses or dependents), each of whom (on any day of the year) owns more than 5 percent of the stock or of the capital or profits interest in the employer.

(4) Other benefits as an alternative

A program must not provide eligible employees with a choice between educational assistance and other remuneration includible in gross income. For purposes of this section, the business practices of the employer (as well as the written program) will be taken into account.

(5) No funding required

A program referred to in paragraph (1) is not required to be funded.

(6) Notification of employees

Reasonable notification of the availability and terms of the program must be provided to eligible employees.

(c) Definitions; special rules

For purposes of this section—

(1) Educational assistance

The term "educational assistance" means—

(A) the payment, by an employer, of expenses incurred by or on behalf of an employee for education of the employee (including, but not limited to, tuition, fees, and similar payments, books, supplies, and equipment), and

(B) the provision, by an employer, of courses of instruction for such employee (including books, supplies, and equipment),

but does not include payment for, or the provision of, tools or supplies which may be retained by the employee after completion of a course of instruction, or meals, lodging, or transportation. The term "educational assistance" also does not include any payment for, or the provision of any benefits with respect to, any course or other education involving sports, games, or hobbies.

(2) Employee

The term "employee" includes, for any year, an individual who is an employee within the meaning of section 401(c)(1) (relating to self-employed individuals).

(3) Employer

An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (2).

(4) Attribution rules

(A) Ownership of stock

Ownership of stock in a corporation shall be determined in accordance with the rules provided under subsections (d) and (e) of section 1563 (without regard to section 1563(e)(3)(C)).

(B) Interest in unincorporated trade or business

The interest of an employee in a trade or business which is not incorporated shall be determined in accordance with regulations prescribed by the Secretary, which shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(5) Certain tests not applicable

An educational assistance program shall not be held or considered to fail to meet any requirements of subsection (b) merely because—

(A) of utilization rates for the different types of educational assistance made available under the program; or

(B) successful completion, or attaining a particular course grade, is required for or considered in determining reimbursement under the program.

(6) Relationship to current law

This section shall not be construed to affect the deduction or inclusion in income of amounts (not within the exclusion under this section) which are paid or incurred, or received as reimbursement, for educational expenses under section 117, 162 or 212.

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed under any other section of this chapter for any amount excluded from income by reason of this section.

(d) Termination

This section shall not apply to taxable years beginning after December 31, 1983.

(Added Pub. L. 95–600, title I, § 164(a), Nov. 6, 1978, 92 Stat. 2811.)

PRIOR PROVISIONS

A prior section 127 (see Prior Provisions note set out under section 121 of this title) was renumbered 128.

EFFECTIVE DATE

Section 164(d) of Pub. L. 95–600 provided that: "The amendments made by this section [adding this section and amending sections 3121(a)(16) to (18), 3306(b)(11) to (13), 3401(a)(16) to (18) of this title and section 409(o) to (q) of Title 42, the Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3121, 3306 of this title; title 42 section 409.

§ 128. Cross references to other acts

(a) For exemption of—

(1) Adjustments of indebtedness under wage earners' plans, see section 679 of the Bankruptcy Act (11 U.S.C. 1079).

(2) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see section 5943 of title 5, United States Code.

(3) Amounts credited to the Maritime Administration under section 9(b)(6) of the Merchant Ship Sales Act of 1946, see section 9(c)(1) of that Act (50 U.S.C. App. 1742).

(4) Benefits under laws administered by the Veterans' Administration, see section 3101 of title 38, United States Code.

(5) Earnings of ship contractors deposited in special reserve funds, see section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177).

(6) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (12 U.S.C. 531).

(7) Railroad retirement annuities and pensions, see section 12 of the Railroad Retirement Act of 1935 (45 U.S.C. 228*l*).

(8) Railroad unemployment benefits, see section 2(e) of the Railroad Unemployment Insurance Act (45 U.S.C. 352).

(9) Special pensions of persons on Army and Navy medal of honor roll, see 38 U.S.C. 562(a)–(c).

(b) For extension of military income tax-exemption benefits to commissioned officers of Public Health Service in certain circumstances, see section 212 of the Public Health Service Act (42 U.S.C. 213).

(Aug. 16, 1954, ch. 736, 68A Stat. 39, § 121; Aug. 1, 1956, ch. 837, title V, § 501(t), 70 Stat. 885; June 17, 1957, Pub. L. 85–56, title XXII, § 2201(25), 71 Stat. 160; Sept. 2, 1958, Pub. L. 85–857, § 13(t) 72 Stat. 1266; renumbered § 122, Feb. 26, 1964, Pub. L. 88–272, title II, § 206(a), 78 Stat. 38; renumbered § 123, Mar. 8, 1966, Pub. L. 89–365, § 1(a)(1), 80 Stat. 32; renumbered § 124, Dec. 30, 1969, Pub. L. 91–172, title IX, § 901(a), 83 Stat. 709; amended Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1901(a)(21), 90 Stat. 1766; renumbered § 125, Nov. 9, 1978, Pub. L. 95–618, title II, § 242(a), 92 Stat. 3193; renumbered § 128, Pub. L. 95–600, title I, §§ 134(a), 164(a), title V, 543(a), Nov. 6, 1978, 92 Stat. 2783, 2811, 2888.)

REFERENCES IN TEXT

The Bankruptcy Act, referred to in subsec. (a)(1), was repealed effective Oct. 1, 1979, by Pub. L. 95–598, title IV, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682.

Section 9 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1742), referred to in subsec. (a)(3), was repealed by Pub. L. 94–412, title V, § 501(g), Sept. 14, 1976, 90 Stat. 1258.

The Railroad Retirement Act of 1935, as amended, referred to in subsec. (a)(7), is act Aug. 29, 1935, ch. 812, 49 Stat. 867 (as amended generally by acts June 24, 1937, ch. 382, part I, 50 Stat. 307, and Oct. 16, 1974, Pub. L. 93–445, title I, 88 Stat. 1305) and is now known as the Railroad Retirement Act of 1974, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Section 12 of the Railroad Retirement Act of 1935 (45 U.S.C. 228*l*), is now covered by section 231m of Title 45. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94–455, § 1901(a)(21), struck out pars. (4), (5), (6), (9), (10), (11), (12), (13), and (17) relating to: benefits under World War Adjustment Compensation Act; benefits under World War Veteran's Act 1924; dividends and interest derived from certain preferred stock by Reconstruction Finance Corporation; income derived from Ogdensburg bridge; income derived from Owensburg bridge and ferries; income from Saint Clair River bridge and ferries; leave compensation payments under section 6 of Armed Forces Leave Act of 1946; mustering-out payments under Mustering-Out Payment Act of 1944; and gain derived from sale or other disposition of Treasury

Bills issued after June 17, 1930, under the Second Liberty Bond Act, respectively, renumbered pars. (7), (8), (14), (15), (16), and (18) as pars. (5), (6), (7), (8), (9), and (4), respectively, struck out references to Statutes at Large, and updated cross references to the United States Code.

Subsec. (b). Pub. L. 94-455, § 1901(a)(21), struck out "58 Stat. 689;" following "Health Service Act(".

1958—Subsec. (a)(18). Pub. L. 85-857 substituted "section 3101 of Title 38, United States Code" for "section 1001 of the Veterans' Benefits Act of 1957".

1957—Subsec. (a)(18). Pub. L. 85-56 substituted provisions relating to benefits under laws administered by the Veterans' Administration, for provisions which related to dependency and indemnity compensation.

1956—Subsec. (a). Act Aug. 1, 1956, added par. (18), relating to dependency and indemnity compensation.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as Effective Date of 1976 Amendment note under section 2 of this title.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-857 effective Jan. 1, 1959, see section 2 of Pub. L. 85-857, set out as an Effective Date note preceding Part I of Title 38, Veterans' Benefits.

CROSS REFERENCES

Patronage refunds paid by Federal intermediate credit banks as exempt from income tax, see section 2077 of Title 12, Banks and Banking.

PART IV—DETERMINATION OF MARITAL STATUS

Sec.
[141, 142. Repealed.]
143. Determination of marital status.
[144, 145. Repealed.]

AMENDMENTS

1977—Pub. L. 95-30, title I, § 101(e)(2), May 23, 1977, 91 Stat. 134, substituted "DETERMINATION OF MARITAL STATUS" for "STANDARD DEDUCTION FOR INDIVIDUALS" as the heading for part IV, and struck out items 141 "Standard deduction", 142 "Individuals not eligible for standard deduction", 144 "Election of standard deduction", and 145 "Cross reference".

[§§ 141, 142. Repealed. Pub. L. 95-30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133]

Section 141, acts Aug. 16, 1954, ch. 736, 68A Stat. 40; Feb. 26, 1964, Pub. L. 88-272, title I, § 112(a), 78 Stat. 23; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 802(a), (c)(4), (e), 83 Stat. 676, 678; Dec. 10, 1971, Pub. L. 92-178, title II, §§ 202, 203(a) to (c), title III, § 301(a), 85 Stat. 511, 520; Mar. 29, 1975, Pub. L. 94-12, title II, §§ 201(a), 202(a), 89 Stat. 28, 29; Dec. 23, 1975, Pub. L. 94-164, § 2(a)(1), (b)(1), 89 Stat. 970, 971; Oct. 4, 1976, Pub. L. 94-455, title IV, § 401(b)(1), (2), title XIX, § 1906(b)(13)(A), 90 Stat. 1556, 1834, provided for the standard deduction.

Section 142, act Aug. 16, 1954, ch. 736, 68A Stat. 40, enumerated the individuals not eligible for the standard deduction.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 143. Determination of marital status

(a) General rule

For purposes of part V—

(1) The determination of whether an individual is married shall be made as of the close of his taxable year; except that if his spouse dies during his taxable year such determination shall be made as of the time of such death; and

(2) An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(b) Certain married individuals living apart

For purposes of part V, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a dependent (A) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the individual, and (B) with respect to whom such individual is entitled to a deduction for the taxable year under section 151,

(2) such individual furnishes over half of the cost of maintaining such household during the taxable year, and

(3) during the entire taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(4), 91 Stat. 133.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-30 substituted "part V" for "this part and part V" in the provisions preceding par. (1).

Subsec. (b). Pub. L. 95-30 substituted "part V" for "this part and part V" in the provisions preceding par. (1).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 2, 37, 42, 43, 63, 85, 105, 219, 220, 1302, 1304, 3402, 6012, 6362, 6428 of this title; title 38 section 503.

[§§ 144, 145. Repealed. Pub. L. 95-30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133]

Section 144, act Aug. 16, 1954, ch. 736, 68A Stat. 41; Feb. 26, 1964, Pub. L. 88-272, title I, § 112(c), title II, § 232(c), 78 Stat. 24, 110; Dec. 10, 1971, Pub. L. 92-178, title II, § 206, title III, § 301(c), 85 Stat. 511, 520; Oct. 4, 1976, Pub. L. 94-455, title V, § 501(b)(3) to (5), title XIX, § 1906(b)(13)(A), 90 Stat. 1558, 1559, 1834, set out the method for electing to take the standard deduction.

Section 145, act Aug. 16, 1954, ch. 736, 68A Stat. 42, made a cross reference to section 36 of this title.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set

out as an Effective Date of 1977 Amendment note under section 1 of this title.

PART V—DEDUCTIONS FOR PERSONAL EXEMPTIONS

§ 151. Allowance of deductions for personal exemptions

[See main edition for text of (a)]

(b) Taxpayer and spouse

An exemption of $1,000 for the taxpayer; and an additional exemption of $1,000 for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for taxpayer or spouse aged 65 or more

(1) For taxpayer

An additional exemption of $1,000 for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(2) For spouse

An additional exemption of $1,000 for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional exemption for blindness of taxpayer or spouse

(1) For taxpayer

An additional exemption of $1,000 for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse

An additional exemption of $1,000 for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

[See main edition for text of (3)]

(e) Additional exemption for dependents

(1) In general

An exemption of $1,000 for each dependent (as defined in section 152)—

(A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $1,000, or

[See main edition for text of (B), (2) to (4)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, § 102(a), 92 Stat. 2771.)

AMENDMENTS

1978—Pub. L. 95-600 increased the exemption from $750 to $1,000 with respect to taxable years beginning after Dec. 31, 1978.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 102(d)(1) of Pub. L. 95-600 provided that: "The amendments made by subsections (a) and (b) [amending this section and sections 6012(a) and 6013(b)(3) of this title] shall apply to taxable years beginning after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 42, 43, 44A, 63, 143, 152, 153, 172, 642, 703, 873, 874, 891, 904, 913, 931, 933, 1211, 1402, 1451, 3402, 6012, 6654 of this title; title 29 section 802.

§ 152. Dependent defined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 50B, 105, 120, 125, 143, 151, 153, 170, 213, 7701 of this title; title 2 section 707; title 5 section 7342; title 20 section 1232g; title 33 section 909.

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.
188. Amortization of certain expenditures for child care facilities.
192. Contributions to black lung benefit trust.

AMENDMENTS

1978—Pub. L. 95-227, § 4(b)(2), Feb. 10, 1978, 95 Stat. 17, added item 192.

1977—Item 188. Pub. L. 95-30, title IV, § 402(a)(4), May 23, 1977, 91 Stat. 155, struck out "on-the-job training and" following "certain expenditures for".

§ 161. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (sec. 261 and following, relating to items not deductible).

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(1), 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95-30 substituted "section 63" for "section 63(a)".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 162. Trade or business expenses

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME

Section 604 of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, § 307, May 23, 1977, 91 Stat. 153; Pub. L. 95-258, § 2, Apr. 7, 1978, 92 Stat. 195, provided that:

"(a) In general.—For purposes of section 162(a) of the Internal Revenue Code of 1954 [subsec. (a) of this section], in the case of any individual who was a State legislator at any time during any taxable year beginning before January 1, 1978, and who elects the application of this section, for any period during such a taxable year in which he was a State legislator—

* * * * *

"(c) Limitation.—The amount taken into account as living expenses attributable to a trade or business as a State legislator for any taxable year beginning before January 1, 1976, under an election made under this section shall not exceed the amount claimed for such purpose under a return (or amended return) filed before May 21, 1976.

"(d) Making and effect of election.—An election under this section shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe. Any such election shall apply to all taxable years beginning before January 1, 1978, for which the period for assessing or collecting a deficiency has not expired before the date of the enactment of this Act [Oct. 4, 1976]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 57, 83, 114, 127, 163, 172, 183, 192, 263, 267, 274, 404, 421, 463, 542, 543, 545, 556, 691, 707, 832, 913, 952, 964, 995, 1054, 1253, 1402 of this title; title 2 section 31c; title 15 section 78kkk; title 42 section 403.

§ 163. Interest

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 216, 267, 483, 691, 703, 809, 832, 913 of this title.

§ 164. Taxes

(a) General rule

Except as otherwise provided in this section, the following taxes shall be allowed as a deduction for the taxable year within which paid or accrued:

[See main edition for text of (1) to (4)]

[(5) Repealed. Pub. L. 95-600, title I, § 111(a), Nov. 6, 1978, 92 Stat. 2777]

In addition, there shall be allowed as a deduction State and local, and foreign, taxes not described in the preceding sentence which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income).

(b) Definitions and special rules

For purposes of this section—

[See main edition for text of (1) to (4)]

(5) Separately stated general sales taxes

If the amount of any general sales tax is separately stated, then, to the extent that the amount so stated is paid by the consumer (otherwise than in connection with the consumer's trade or business) to his seller, such amount shall be treated as a tax imposed on, and paid by, such consumer.

[See main edition for text of (c) to (f)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, § 111(a), (b), 92 Stat. 2777.)

AMENDMENTS

1978—Subsec. (a)(5). Pub. L. 95-600, § 111(a), struck out subsec. (a)(5), which provided a deduction for State and local taxes on the sale of gasoline, diesel fuel, and other motor fuels.

Subsec. (b)(5). Pub. L. 95-600, § 111(b), struck out in heading "and gasoline taxes" following "sales taxes", and in text, "or of any tax on the sale of gasoline, diesel fuel, or other motor fuel" following "sales tax".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 111(c) of Pub. L. 95-600 provided that: "The amendments made by this section [repealing subsec. (a)(5) and amending subsec. (b)(5) of this section] shall apply to taxable years beginning after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 163, 216, 275, 542, 556, 691, 703, 804, 822, 832, 853, 901, 903, 905, 913, 960, 1001, 1012, 6362 of this title; title 31 section 1228.

§ 166. Bad debts

[See main edition for text of (a) to (c)]

(d) Nonbusiness debts

(1) General rule

In the case of a taxpayer other than a corporation—

(A) subsections (a) and (c) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 1 year.

[See main edition for text of (2); (e) to (g)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (d)(1)(B). Pub. L. 94-455, § 1402(b)(2), provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455, provided in part for the substitution of "1 year" for "9 months" in subsec. (d)(1)(B) and that such substitution would be effective with respect to taxable years beginning after Dec. 31, 1977.

§ 167. Depreciation

[See main edition for text of (a) to (h)]

[(i) Repealed. Pub. L. 95-600, title III, § 312(c)(4), Nov. 6, 1978, 92 Stat. 2826]

[See main edition for text of (j)]

(k) Depreciation of expenditures to rehabilitate low-income rental housing

(1) 60-month rule

The taxpayer may elect, in accordance with regulations prescribed by the Secretary, to compute the depreciation deduction provided by subsection (a) attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1982, under the

straight line method using a useful life of 60 months and no salvage value. Such method shall be in lieu of any other method of computing the depreciation deduction under subsection (a), and in lieu of any deduction for amortization, for such expenditures.

[See main edition for text of (2)]

(3) Definitions

For purposes of this subsection—

[See main edition for text of (A) to (C)]

(D) Rehabilitation expenditures incurred

Rehabilitation expenditures incurred pursuant to a binding contract entered into before January 1, 1982, and rehabilitation expenditures incurred with respect to low-income rental housing the rehabilitation of which has begun before January 1, 1982, shall be deemed incurred before January 1, 1982.

[See main edition for text of (l) and (m)]

(n) Straight line method in certain cases

(1) In general

In the case of any property in whole or in part constructed, reconstructed, erected, or used on a site which was, on or after June 30, 1976, occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date—

(A) subsections (b), (j), (k), and (*l*) shall not apply, and

(B) the term "reasonable allowance" as used in subsection (a) means only an allowance computed under the straight line method.

The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation.

(2) Exceptions

The limitations imposed by this subsection shall not apply—

(A) to personal property, and

(B) in the case of demolition or substantial alteration of a structure located in a registered historic district, if—

(i) such structure was not a certified historic structure,

(ii) the Secretary of the Interior certified to the Secretary that such structure is not of historic significance to the district, and

(iii) if the certification referred to in clause (ii) occurs after the beginning of the demolition or substantial alteration of such structure, the taxpayer certifies to the Secretary that, at the beginning of such demolition or substantial alteration, he in good faith was not aware of the requirements of clause (ii).

(3) Definitions

For purposes of this subsection, the terms "certified historic structure", "registered historic district", and "certified rehabilitation" have the respective meanings given such terms by section 191(d).

(o) Substantially rehabilitated historic property

(1) General rule

Pursuant to regulations prescribed by the Secretary, the taxpayer may elect to compute the depreciation deduction attributable to substantially rehabilitated historic property (other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191) as though the original use of such property commenced with him. The election shall be effective with respect to the taxable year referred to in paragraph (2) and all succeeding taxable years.

(2) Substantially rehabilitated property

For purposes of paragraph (1), the term "substantially rehabilitated historic property" means any certified historic structure (as defined in section 191(d)(1)) with respect to which the additions to capital account for any certified rehabilitation (as defined in section 191(d)(4)) during the 24-month period ending on the last day of any taxable year, reduced by any amounts allowed or allowable as depreciation or amortization with respect thereto, exceeds the greater of—

(A) the adjusted basis of such property, or

(B) $5,000.

The adjusted basis of the property shall be determined as of the beginning of the first day of such 24-month period, or of the holding period of the property (within the meaning of section 1250(e)), whichever is later.

(p) Straight line method for boilers fueled by oil or gas

In the case of any boiler which, by reason of section 48(a)(10), is not section 38 property—

(1) subsections (b), (j), and (*l*) shall not apply, and

(2) the term "reasonable allowance" as used in subsection (a) shall mean only an allowance computed under the straight line method using a useful life equal to the class life prescribed by the Secretary under subsection (m) which is applicable to such property (determined without regard to the last sentence of subsection (m)(1)).

(q) Retirement or replacement of certain boilers, etc., fueled by oil or gas

(1) In general

If—

(A) a boiler or other combustor was in use on October 1, 1978, and as of such date the principal fuel for such combustor was petroleum or petroleum products (including natural gas), and

(B) the taxpayer establishes to the satisfaction of the Secretary that such combustor will be retired or replaced on or before the date specified by the taxpayer,

then for the period beginning with the taxable year in which subparagraph (B) is satisfied, the term "reasonable allowance" as used in subsection (a) includes an allowance under the straight line method using a useful life equal to the period ending with the date established under subparagraph (B).

(2) Interest

If the retirement or replacement of any combustor does not occur on or before the date referred to in paragraph (1)(B)—

(A) this subsection shall cease to apply with respect to such combustor as of such date, and

(B) interest at the rate determined under section 6621 on the amount of the tax benefit arising from the application of this subsection with respect to such combustor shall be due and payable for the period during which such tax benefit was available to the taxpayer and ending on the date referred to in paragraph (1)(B).

(r) Depreciation of improvements in the case of mines, etc.

For additional rule applicable to depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber, see section 611.

(As amended Nov. 12, 1977, Pub. L. 95-171, § 4(a), 91 Stat. 1355; Nov. 6, 1978, Pub. L. 95-600, title III, §§ 312(c)(4), 367, title VII, § 701(f)(4), (6), 92 Stat. 2826, 2857, 2901, 2902; Nov. 8, 1978, Pub. L. 95-615, § 7(a), 92 Stat. 3098; Nov. 9, 1978, Pub. L. 95-618, title III, § 301(d)(3), (e)(1), 92 Stat. 3200, 3201.)

AMENDMENTS

1978—Subsec. (i). Pub. L. 95-600, § 312(c)(4), struck out subsec. (i), which related to a limitation in the case of property constructed or acquired during the suspension period.

Subsec. (k). Pub. L. 95-615 substituted "January 1, 1979" for "January 1, 1978" wherever appearing in pars. (1) and (3)(D).

Pub. L. 95-600, § 367, substituted "January 1, 1982" for "January 1, 1979" wherever appearing in pars. (1) and (3)(D).

Subsec. (n). Pub. L. 95-600, § 701(f)(4), in par. (1), substituted "occupied by a certified historic structure (or by any structure in a registered historic district) which is demolished or substantially altered after such date" for "occupied by a certified historic structure (as defined in section 191(d)(1)) which is demolished or substantially altered (other than by virtue of a certified rehabilitation as defined in section 191(d)(3) after such date", inserted the "and" preceding subpar. (B), substituted "means" for "shall mean" in subpar. (B), and added provision that "The preceding sentence shall not apply if the last substantial alteration of the structure is a certified rehabilitation."; in par. (2), substituted heading "Exceptions" for "Exception", designated existing text as subpar. (A), and added subpar. (B); and added par. (3).

Subsec. (o). Pub. L. 95-600, § 701(f)(6), inserted in par. (1) "(other than property with respect to which an amortization deduction has been allowed to the taxpayer under section 191)" following "substantially rehabilitated historic property" and substituted in par. (2) "section 191(d)(4)" for "section 191(d)(3)".

Subsec. (p). Pub. L. 95-618, § 301(d)(3), added subsec. (p). Former subsec. (p) redesignated (r).

Subsec. (q). Pub. L. 95-618, § 301(e)(1), added subsec. (q).

Subsec. (r). Pub. L. 95-618, § 301(d)(3), redesignated former subsec. (p) as (r).

1977—Subsec. (k). Pub. L. 95-171 substituted "January 1, 1979" for "January 1, 1978" wherever appearing in pars. (1) and (3)(D).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment of subsec. (i) of this section by section 312(c)(4) of Pub. L. 95-600 applicable to taxable years ending after Dec. 31, 1978, see section 312(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Amendment of subsecs. (n) and (o)(1), (2) by section 701(f)(4) and (6) of Pub. L. 95-600 effective as if included within the enactment of subsecs. (n) and (o)(1), (2) by section 2124 of Pub. L. 94-455, see section 701(f)(8) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 191 of this title.

Redesignation of subsec. (p) as (r) and addition of subsec. (o) by Pub. L. 95-618 applicable to property which is placed in service after Sept. 30, 1978 but not to property which is constructed, reconstructed, erected, or acquired pursuant to a contract which, on Oct. 1, 1978, and at all times thereafter, was binding on the taxpayer, see section 301(d)(4) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 48 of this title.

Section 301(e)(2) of Pub. L. 95-618 provided that: "The amendment made by paragraph (1) [adding subsec. (q)] shall apply to taxable years ending after the date of enactment of this Act [Nov. 9, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 94-455, § 203(b), as amended by Pub. L. 95-171, § 4(b), Nov. 12, 1977, 91 Stat. 1355; Pub. L. 95-615, § 7(b), Nov. 8, 1978, 92 Stat. 3098, provided that: "The amendments made by paragraphs (1), (3), and (4) of subsection (a) [to subsecs. (k)(1), (3)(B), (D) of this section] shall apply to expenditures paid or incurred after December 31, 1975. The amendment made by paragraph (2) of subsection (a) [to subsec. (k)(2)(A) of this section] shall apply to expenditures incurred after December 31, 1975."

[Section 7(b) of Pub. L. 95-615 [which amended section 203(b) of Pub. L. 94-455 exactly as that section 203(b) had been amended by Pub. L. 95-171] to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95-615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.]

TERMINATION DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-615 to cease to have effect on the day after Nov. 8, 1978, see section 210(a) of Pub. L. 95-615, set out as a Termination Date of 1978 Amendment note under section 61 of this title.

§ 169. Amortization of pollution control facilities

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (d)(1)(B), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of Title 42, The Public Health and Welfare. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of Title 42. For complete classification of this Act to the Code, see short Title note set out under section 7401 of Title 42 and Tables.

Section 302(b) of the Clean Air Act, referred to in subsec. (d)(2), formerly classified to section 1857h(b) of Title 42, was reclassified to section 7602(b) of Title 42 on enactment of Pub. L. 95-95.

§ 170. Charitable, etc., contributions and gifts

[See main edition for text of (a) to (d)]

(e) Certain contributions of ordinary income and capital gain property

(1) General rule

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

[See main edition for text of (A)]

(B) in the case of a charitable contribution—

[See main edition for text of (i) and (ii)]

40 percent (28/46, in the case of a corporation) of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a) or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

[See main edition for text of (2) and (3)]

(f) Disallowance of deduction in certain cases and special rules

[See main edition for text of (1) and (2)]

(3) Denial of deduction in case of certain contributions of partial interests in property

[See main edition for text of (A)]

(B) Exceptions

Subparagraph (A) shall not apply to a contribution of—

(i) a remainder interest in a personal residence or farm,

(ii) an undivided portion of the taxpayer's entire interest in property,

(iii) a lease on, option to purchase, or easement with respect to real property granted in perpetuity to an organization described in subsection (b)(1)(A) exclusively for conservation purposes, or

(iv) a remainder interest in real property which is granted to an organization described in subsection (b)(1)(A) exclusively for conservation purposes.

[See main edition for text of (C), (4) to (6); (g) to (i)]

(As amended May 23, 1977, Pub. L. 95-30, title III, § 309(a), 91 Stat. 154; Nov. 6, 1978, Pub. L. 95-600, title IV, §§ 402(b)(2), 403(c)(1), 92 Stat. 2868.)

AMENDMENTS

1978—Subsec. (e)(1)(B). Pub. L. 95-600 substituted "40 percent" for "50 percent" and "$^{28}/_{46}$" for "62½ percent".

1977—Subsec. (f)(3)(B)(iii). Pub. L. 95-30 substituted "real property granted in perpetuity to an organization" for "real property of not less than 30 years' duration granted to an organization".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(c)(2) of Pub. L. 95-600 provided that: "The amendment made by subsection (b)(2) [amending subsec. (e)(1)(B) of this section by substituting "40 percent" for "50 percent"] shall apply to contributions made after October 31, 1978."

Section 403(d)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) of subsection (c) [amending subsec. (e)(1)(B) of this section by substituting "$^{28}/_{46}$" for "62½ percent"] shall apply to gifts made after December 31, 1978."

EFFECTIVE AND TERMINATION DATES OF 1977 AMENDMENT

Section 309(b)(1) of Pub. L. 95-30 provided that: "The amendment made by subsection (a) [amending subsec. (f)(3)(B)(iii) of this section] shall apply with respect to contributions or transfers made after June 13, 1977, and before June 14, 1981."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2124(e)(4) of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, § 309(b)(2), May 23, 1977, 91 Stat. 154, provided that: "The amendments made by this subsection [amending subsec. (f) of this section and sections 2055(e)(2) and 2522(c)(2) of this title] shall apply with respect to contributions or transfers made after June 13, 1976, and before June 14, 1981."

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For includibility of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95-600, set out as a note under section 2055 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44A, 57, 79, 101, 103, 117, 151, 152, 162, 381, 410, 501, 507 to 509, 512, 535, 545, 556, 584, 642, 664, 674, 677, 702, 703, 809, 873, 882, 931, 1011, 2039, 2055, 2517, 4041, 4221, 4253, 4911, 4941, 4942, 4944, 4945, 4947, 4948, 5214, 6033, 7428 of this title; title 2 sections 439a, 441i; title 12 section 3014; title 16 section 1285; title 20 sections 76m, 954; title 22 section 2876; title 29 section 1052; title 42 section 2996b.

§ 172. Net operating loss deduction

[See main edition for text of (a)]

(b) Net operating loss carrybacks and carryovers

(1) Years to which loss may be carried

(A) Except as provided in subparagraphs (D), (E), (F), and (G), a net operating loss for any taxable year shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss.

(B) Except as provided in subparagraphs (C), (D), and (E), a net operating loss for any taxable year ending after December 31, 1955, shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss. Except as provided in subparagraphs (C), (D), (E), (F), and (G), a net operating loss for any taxable year ending after December 31, 1975, shall be a net operating loss carryover to each of the 7 taxable years following the taxable year of such loss.

[See main edition for text of (C) to (G)]

(H) In the case of an electing GSOC which has a net operating loss for any taxable year such loss shall not be a net operating loss carryback to any taxable year preceding the year of such loss, but shall be a net operating loss carryover to each of the 10 taxable years following the year of such loss.

[See main edition for text of (2)]

(3) Special rules

(A) Paragraph (1)(D) shall apply only if—

(i) the foreign expropriation loss (as defined in subsection (h)) for the taxable year equals or exceeds 50 percent of the net operating loss for the taxable year,

(ii) in the case of a foreign expropriation loss for a taxable year ending after December 31, 1963, the taxpayer elects (at such time and in such manner as the Secretary by regulations prescribes) to have paragraph (1)(D) apply, and

(iii) in the case of a foreign expropriation loss for a taxable year ending after December 31, 1958, and before January 1, 1964, the taxpayer elects (in such manner as the Secretary by regulations prescribes) on or before December 31, 1965, to have paragraph (1)(D) apply.

(B) If a taxpayer makes an election under subparagraph (A)(iii), then (notwithstanding any law or rule of law), with respect to any taxable year ending before January 1, 1964, affected by the election—

(i) the time for making or changing any choice or election under subpart A of part III of subchapter N (relating to foreign tax credit) shall not expire before January 1, 1966,

(ii) any deficiency attributable to the election under subparagraph (A)(iii) or to the application of clause (i) of this subparagraph may be assessed at any time before January 1, 1969, and

(iii) refund or credit of any overpayment attributable to the election under subparagraph (A)(iii) or to the application of clause (i) of this subparagraph may be made or allowed if claim therefor is filed before January 1, 1969.

(C) Any taxpayer entitled to a carryback period under paragraph (1) may elect to relinquish the entire carryback period with respect to a net operating loss for any taxable year ending after December 31, 1975. Such election shall be made in such manner as may be prescribed by the Secretary, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

[(D), (E) Redesignated (B) and (C).]

[See main edition for text of (c)]

(d) Modifications

The modifications referred to in this section are as follows:

[See main edition for text of (1) to (7)]

(8) Zero bracket amount

In the case of a taxpayer other than a corporation, the zero bracket amount shall be treated as a deduction allowed by this chapter. For purposes of subsection (c)—

(A) the deduction provided by the preceding sentence shall be in lieu of any itemized deductions of the taxpayer, and

(B) such sentence shall not apply to an individual who elects to itemize deductions.

[See main edition for text of (e) to (i)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(2), 91 Stat. 137; Nov. 6, 1978, Pub. L. 95-600, title VI, § 601(b)(1), title VII, §§ 701(d)(1), 703(p)(1), 92 Stat. 2896, 2900, 2943.)

AMENDMENT OF SUBSEC. (b)(1)(A)

Sections 371(a)(2) and (d) of Pub. L. 95-600 provided that, with respect to taxable years beginning after Sept. 30, 1979, subsec. (b)(1)(A) of this section is amended to read as follows:

(A) Except as provided in subparagraphs (D), (E), (F), (G), and (H), a net operating loss for any taxable year shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss.

ADDITION OF SUBSEC. (b)(1)(H)

Sections 371(a)(1) and (d) of Pub. L. 95-600 provided that, with respect to taxable years beginning after Sept. 30, 1979, subsec. (b)(1)(H) of this section is added to read as follows:

(H) Product liability losses.—In the case of a taxpayer which has a product liability loss (as defined in subsection (i)) for a taxable year beginning after September 30, 1979 (referred to in this subparagraph as the "loss year"), the product liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the loss year.

ADDITION OF SUBSEC. (i) AND REDESIGNATION OF FORMER SUBSEC. (i) AS (j)

Sections 371(b) and (d) of Pub. L. 95-600 provided that, with respect to taxable years beginning after Sept. 30, 1979, subsec. (i) of this section is added and former subsec. (i) of this section is redesignated as (j) to read as follows:

(i) Rules relating to product liability losses

For purposes of subsection (b)—

(1) Product liability loss

The term "product liability loss" means, for any taxable year, the lesser of—

(A) the net operating loss for such year reduced by any portion thereof which is attributable to a foreign expropriation loss, or

(B) the sum of the amounts allowable as deductions under sections 162 and 165 which are attributable to—

(i) product liability, or

(ii) expenses incurred in the investigation or settlement of, or opposition to, claims against the taxpayer on account of product liability.

(2) Product liability

The term "product liability" means—

(A) liability of the taxpayer for damages on account of physical injury or emotion-

al harm to individuals, or damage to or loss of the use of property, on account of any defect in any product which is manufactured, leased, or sold by the taxpayer, but only if

(B) such injury, harm, or damage arises after the taxpayer has completed or terminated operations with respect to, and has relinquished possession of, such product.

(3) Election

Any taxpayer entitled to a 10-year carryback under subsection (b)(1)(H) from any loss year may elect to have the carryback period with respect to such loss year determined without regard to subsection (b)(1)(H). Such election shall be made in such manner as may be prescribed by the Secretary and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating loss. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

(j) Cross references

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

AMENDMENTS

1978—Subsec. (b)(1)(A). Pub. L. 95-600, § 703(p)(1)(A), struck out provisions relating to net operating loss carryback with respect to a taxable year ending on or after Dec. 31, 1962, for which a certification has been issued under section 317 of the Trade Expansion Act of 1962.

Subsec. (b)(1)(B). Pub. L. 95-600, § 701(d)(1), inserted reference to subpar. (G).

Subsec. (b)(1)(H). Pub. L. 95-600, § 601(b)(1), added subsec. (b)(1)(H), relating to an electing GSOC.

Subsec. (b)(3)(A). Pub. L. 95-600, § 703(p)(1)(B), redesignated former subsec. (b)(3)(C) as (b)(3)(A). Former subsec. (b)(3)(A), which related to conditions for application of paragraph (1)(A)(ii), was struck out.

Subsec. (b)(3)(B). Pub. L. 95-600, § 703(p)(1)(B), (C), redesignated former subsec. (b)(3)(D) as (b)(3)(B) and, as so redesignated, substituted "subparagraph (A)(iii)" for "subparagraph (C)(iii)". Former subsec. (b)(3)(B), which related to the applicability of paragraph (1)(A)(ii) to partnerships and electing small business corporations, was struck out.

Subsec. (b)(3)(C). Pub. L. 95-600, § 703(p)(1)(B), redesignated former subsec. (b)(3)(E) as (b)(3)(C). Former subsec. (b)(3)(C) redesignated (b)(3)(A).

Subsec. (b)(3)(D). Pub. L. 95-600, § 703(p)(1)(B), redesignated former subsec. (b)(3)(D) as (b)(3)(B).

Subsec. (b)(3)(E). Pub. L. 95-600, § 703(p)(1)(B), redesignated former subsec. (b)(3)(E) as (b)(3)(C).

1977—Subsec. (d)(8). Pub. L. 95-30 added subsec. (d)(8).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 371(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (b)(1)(A)(i), (b)(1)(H), (i), (j) of this section and section 537(b)(4), (5) of this title] shall apply with respect to taxable years beginning after September 30, 1979."

Amendment of subsec. (b)(1)(H) by section 601(b)(1) of Pub. L. 95-600 effective with respect to corporations chartered after Dec. 31, 1978 and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as a note under section 1391 of this title.

Section 701(d)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending subsec. (b)(1)(B) of this section] shall apply to losses incurred in taxable years ending after December 31, 1975."

Section 703(p)(4) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsecs. (b)(1)(A), (b)(3)(A) to (E) of this section and sections 6501(h) and 6511(d)(2)(A) of this title] shall apply with respect to losses sustained in taxable years ending after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 56, 170, 186, 246, 381, 481, 512, 527, 528, 535, 537, 545, 556, 584, 613A, 642, 703, 804, 809, 822, 823, 844, 852, 904, 1212, 1242, 1244, 1247, 1314, 1341, 1351, 1373, 1374, 1402, 6164, 6411 of this title; title 49 section 1376.

§ 184. Amortization of certain railroad rolling stock

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 57, 642, 861, 1082, 1245 of this title.

§ 185. Amortization of railroad grading and tunnel bores

[See main edition for text of (a) to (d)]

(e) Adjusted basis for pre-1969 railroad grading and tunnel bores

[See main edition for text of (1) and (2)]

(3) Property acquired or constructed before March 1, 1913

[See main edition for text of (A)]

(B) In the case of any property valued under an original valuation made by the Interstate Commerce Commission pursuant to subchapter V of chapter 107 of title 49, the adjusted basis of such property shall be equal to the amount ascertained by the Interstate Commerce Commission as of the date of such valuation to be such property's cost of reproduction new (as the term "cost of reproduction new" is used in such subchapter V).

[See main edition for text of (C) and (D); (f) to (j)]

(As amended Pub. L. 95-473, § 2(a)(2)(B), Oct. 17, 1978, 92 Stat. 1464.)

AMENDMENTS

1978—Subsec. (e)(3)(B). Pub. L. 95-473 substituted "subchapter V of chapter 107 of title 49" for "section 19a of part I of the Interstate Commerce Act (49 U.S.C. 19a)" and "such subchapter V" for "such section 19a".

§ 188. Amortization of certain expenditures for child care facilities

[See main edition for text of (a)]

(b) Section 188 property

For purposes of this section, the term "section 188 property" means tangible property which qualifies under regulations prescribed by

the Secretary as a child care center facility primarily for the children of employees of the taxpayer; except that such term shall not include—

(1) any property which is not of a character subject to depreciation; or

(2) property located outside the United States.

(c) Application of section

This section shall apply only with respect to expenditures made after December 31, 1971, and before January 1, 1982.

(As amended Pub. L. 95-30, title IV, § 402(a)(1)-(3), May 23, 1977, 91 Stat. 155.)

AMENDMENTS

1977—Pub. L. 95-30, § 402(a)(3), struck out "on-the-job training and" following "expenditures for" in section catchline.

Subsec. (b). Pub. L. 95-30, § 402(a)(2), struck out "as a facility for on-the-job training of employees (or prospective employees) of the taxpayer, or" following "regulations prescribed by the Secretary".

Subsec. (c). Pub. L. 95-30, § 402(a)(1), substituted "January 1, 1982" for "January 1, 1977".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 402(b) of Pub. L. 95-30 provided that: "The amendments made by subsection (a) [amending this section and section 57(a)(10) of this title] shall apply with respect to expenditures made after December 31, 1976."

§ 189. Amortization of real property construction period interest and taxes

(a) Capitalization of construction period interest and taxes

Except as otherwise provided in this section or in section 266 (relating to carrying charges), in the case of an individual, no deduction shall be allowed for real property construction period interest and taxes. For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual.

[See main edition for text of (b) to (f)]

(As amended Pub. L. 95-600, title VII, § 701(m)(1), Nov. 6, 1978, 92 Stat. 2907.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 struck out "an electing small business corporation (within the meaning of section 1371(b)), or personal holding company (within the meaning of section 542)," following "individual" and added provision that for purposes of this section, an electing small business corporation, a personal holding company, and a foreign personal holding company, as defined in sections 1371(b), 542, and 552, shall be treated as an individual.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(m)(3)(A) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending subsec. (a) of this section] shall take effect as if included in the amendment made by section 201(a) of the Tax Reform Act of 1976 [section 201(a) of Pub. L. 94-455]."

EFFECTIVE DATE

Section 201(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 701(e), Nov. 6, 1978, 92 Stat. 2900, provided that:

"The amendments made by this section [adding this section and amending analysis preceding section 161 of this title] shall apply—

"(1) in the case of nonresidential real property, if the construction period begins on or after the first day of the first taxable year beginning after December 31, 1975,

* * * * *

§ 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1245, 1250 of this title.

§ 191. Amortization of certain rehabilitation expenditures for certified historic structures

[See main edition for text of (a) to (c)]

(d) Definitions

For purposes of this section—

(1) Certified historic structure

The term "certified historic structure" means a building or structure which is of a character subject to the allowance for depreciation provided in section 167 and which—

(A) is listed in the National Register, or

(B) is located in a registered historic district and is certified by the Secretary of the Interior to the Secretary as being of historic significance to the district.

(2) Registered historic district

The term "registered historic district" means—

(A) any district listed in the National Register, and

(B) any district—

(i) which is designated under a statute of the appropriate State or local government, if such statute is certified by the Secretary of the Interior to the Secretary as containing criteria which will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district, and

(ii) which is certified by the Secretary of the Interior to the Secretary as meeting substantially all of the requirements for the listing of districts in the National Register.

(3) Amortizable basis

The term "amortizable basis" means the portion of the basis attributable to amounts expended in connection with certified rehabilitation.

(4) Certified rehabilitation

The term "certified rehabilitation" means any rehabilitation of a certified historic structure which the Secretary of the Interior has certified to the Secretary as being consistent with the historic character of such property or the district in which such property is located.

[*See main edition for text of* (e)]

(f) Special rules for certain interests

(1) Life tenant and remainderman

In the case of property held by one person for life with remainder to another person, the deduction under this section shall be computed as if the life tenant were the absolute owner of the property and shall be allowable to the life tenant.

(2) Certain lessees

(A) In general

In the case of a lessee of a certified historic structure who has expended amounts in connection with the certified rehabilitation of such structure which are properly chargeable to capital account, the deduction under this section shall be allowable to such lessee with respect to such amounts.

(B) Amortizable basis

For purposes of subsection (a), the amortizable basis of such lessee shall not exceed the sum of the amounts described in subparagraph (A).

(C) Limitation

Subparagraph (A) shall apply only if on the date of the certified rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) extends—

(i) beyond the last day of the useful life (determined without regard to this section) of the improvements for which the amounts described in subparagraph (A) were expended, and

(ii) for not less than 30 years.

(g) Cross references

(1) For rules relating to the listing of buildings, structures, and historic districts in the National Register, see the Act entitled "An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes", approved October 15, 1966 (16 U.S.C. 470 et seq.).

(2) For special rules with respect to certain gain derived from the disposition of property the adjusted basis of which is determined with regard to this section, see sections 1245 and 1250.

(As amended Pub. L. 95-600, § 701(f)(1), (2), (7), Nov. 6, 1978, 92 Stat. 2900-2902.)

REFERENCES IN TEXT

The Act entitled "An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes", approved October 15, 1966 (16 U.S.C. 470 et seq.), referred to in subsec. (g)(1), is Pub. L. 89-665, Oct. 15, 1966, 80 Stat. 915, as amended, known as the National Historic Preservation Act of 1966, which is classified to sections 470 to 470t of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 470 of Title 16 and Tables.

AMENDMENTS

1978—Subsec. (d)(1). Pub. L. 95-600, § 701(f)(1), struck out subpar. (C), which defined "certified historic structure" as a building or structure which is located in an historic district designated under a State or local statute if such statute, as certified by the Secretary, will substantially achieve the purpose of preserving and rehabilitating buildings of historic significance to the district.

Subsec. (d)(2). Pub. L. 95-600, § 701(f)(1), added subsec. (d)(2).

Subsec. (d)(3). Pub. L. 95-600, § 701(f)(1), redesignated former subsec. (d)(2) as (d)(3). Former subsec. (d)(3) redesignated (d)(4).

Subsec. (d)(4). Pub. L. 95-600, § 701(f)(1), redesignated former subsec. (d)(3) as (d)(4).

Subsec. (f). Pub. L. 95-600, § 701(f)(7), added subsec. (f) heading, redesignated former subsec. (f) as par. (1), and added par. (2).

Subsec. (g)(1). Pub. L. 95-600, § 701(f)(2), inserted reference to rules relating to the listing of historic districts and substituted following "National Register" text reading ", see the Act entitled 'An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes', approved October 15, 1966 (16 U.S.C. 470 et seq.)" for "and for definitions of 'National Register' and 'Registered Historic District', see section 470 et seq. of title 16 of the United States Code."

Subsec. (g)(2). Pub. L. 95-600, § 701(f)(2), substituted "special rules" for "special rule" and inserted reference to section 1250.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(f)(8) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending this section and sections 57, 167, 280B, 1245, and 1250 of this title] shall take effect as if included in the respective provisions of the Internal Revenue Code of 1954 [this title] to which such amendments relate, as such provision were added to such Code, or amended, by section 2124 of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, § 2124, Oct. 4, 1976, 90 Stat. 1916]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 57, 280B, 642, 1245, 1250 of this title.

§ 192. Contributions to black lung benefit trust

(a) Allowance of deduction

There is allowed as a deduction for the taxable year an amount equal to the sum of the amounts contributed by the taxpayer during the taxable year to or under a trust or trusts described in section 501(c)(21).

(b) Limitation

The maximum amount of the deduction allowed by subsection (a) for any taxpayer for any taxable year shall not exceed the greater of—

(1) the amount necessary to fund (with level funding) the remaining unfunded liability of the taxpayer for black lung claims filed (or expected to be filed) by (or with respect to) past or present employees of the taxpayer, or

(2) the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year.

(c) Special rules

(1) Method of determining amounts referred to in subsection (b)

(A) In general

The amounts described in subsection (b) shall be determined by using reasonable actuarial methods and assumptions which are not inconsistent with regulations prescribed by the Secretary.

(B) Funding period

Except as provided in subparagraph (C), the funding period for purposes of subsection (b)(1) shall be the greater of—

(i) the average remaining working life of miners who are present employees of the taxpayer, or

(ii) 10 taxable years.

For purposes of the preceding sentence, the term "miner" has the same meaning as such term has when used in section 402(d) of the Black Lung Benefits Act (30 U.S.C. 902(d)).

(C) Different funding periods

To the extent that—

(i) regulations prescribed by the Secretary provide for a different period, or

(ii) the Secretary consents to a different period proposed by the taxpayer,

such different period shall be substituted for the funding period provided in subparagraph (B).

(2) Benefit payments taken into account

In determining the amounts described in subsection (b), only those black lung benefit claims the payment of which is expected to be made from the trust shall be taken into account.

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a payment of a contribution on the last day of a taxable year if the payment is on account of that taxable year and is made not later than the time prescribed by law for filing the return for that taxable year (including extensions thereof).

(4) Contributions to be in cash or certain other items

No deduction shall be allowed under subsection (a) with respect to any contribution to a trust described in section 501(c)(21) other than a contribution in cash or in items in which such trust may invest under clause (ii) of section 501(c)(21)(B).

(5) Denial of section 162 deduction with respect to liability

No deduction shall be allowed under section 162(a) with respect to any liability taken into account in determining the deduction under subsection (a) of this section of the taxpayer (or a predecessor).

(d) Carryover of excess contributions

If the amount of the deduction determined under subsection (a) for the taxable year (without regard to the limitation imposed by subsection (b)) with respect to a trust exceeds the limitation imposed by subsection (b) for the taxable year, the excess shall be carried over to the succeeding taxable year and treated as contributed to the trust during that year.

(e) Definition of black lung benefit claim

For purposes of this section, the term "black lung benefit claim" means a claim for compensation for disability or death due to pneumoconiosis under part C of title IV of the Federal Coal Mine Health and Safety Act of 1969 or under any State law providing for such compensation.

(Added Pub. L. 95-227, § 4(b)(1), Feb. 10, 1978, 92 Stat. 16, and amended Pub. L. 95-488, § 1(a)-(c), Oct. 20, 1978, 92 Stat. 1637.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsec. (e), is Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95-164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the 1969 Act, as redesignated, is classified generally to part C (§ 931 et seq.) of subchapter IV of chapter 22 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-488, § 1(a), substituted provision limiting the allowable deduction to the greater of the amount necessary to fund the remaining unfunded liability of the taxpayer for the black lung claims filed or expected to be filed by past or present employees of the taxpayer or the aggregate amount necessary to increase each trust described in section 501(c)(21) to the amount required to pay all amounts payable out of such trust for the taxable year for provision limiting the allowable deduction to the amount necessary, when added to the fair market value of trust assets at the beginning of the taxable year, to fund the greater of current year obligations or certain future obligations.

Subsec. (c)(1). Pub. L. 95-488, § 1(b), substituted in heading "Method of determining amounts referred to in subsection (b)" for "Determination of expected future payments" and in text inserted provisions establishing the funding period as the greater of the average remaining working life of miners who are present employees of the taxpayer or 10 taxable years and permitting a different funding period if prescribed or consented to by the Secretary

Subsec. (c)(5). Pub. L. 95-488, § 1(c), added subsec. (c)(5).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(e) of Pub. L. 95-488 provided that: "The amendments made by this section [amending this section and section 6104 of this title] shall apply to taxable years beginning after December 31, 1977. Nothing in the amendments made by subsection (d) to section 6104 of the Internal Revenue Code of 1954 shall be construed to permit the disclosure under such section 6104 of confidential business information of contributors to any trust described in section 501(c)(21) of such Code."

EFFECTIVE DATE

Section 4(f) of Pub. L. 95-227 provided that: "The amendments made by this section [enacting this section and sections 4951 to 4953 and amending sections 501, 4946, 6104, 6213, 6405, 6501, 6503, and 7451 of this title] shall apply with respect to contributions, acts, and expenditures made after December 31, 1977, in and for taxable years beginning after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4952, 4953 of this title.

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

Sec.
[218. Repealed.]

AMENDMENTS

1978—Pub. L. 95-600, title I, § 113(a)(2)(A), Nov. 6, 1978, 92 Stat. 2778, struck out item 218.

§ 211. Allowance of deductions

In computing taxable income under section 63, there shall be allowed as deductions the items specified in this part, subject to the exceptions provided in part IX (section 261 and following, relating to items not deductible).

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(3), 91 Stat. 137.)

AMENDMENTS

1977—Pub. L. 95-30 substituted "section 63" for "section 63(a)".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 212. Expenses for production of income

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 57, 104, 105, 127, 6421 of this title.

§ 216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder

[See main edition for text of (a)]

(b) Definitions

For purposes of this section—

[See main edition for text of (1) to (5)]

(6) Stock owned by person from whom the corporation acquired its property

(A) In general

If the original seller acquires any stock of the corporation—

(i) from the corporation by purchase, or

(ii) by foreclosure (or by instrument in lieu of foreclosure) of any purchase-money security interest in such stock held by the original seller,

the original seller shall be treated as a tenant-stockholder for a period not to exceed 3 years from the date of acquisition.

(B) Original seller must have right to occupy apartment or house

Subparagraph (A) shall apply with respect to any acquisition of stock only if, together with such acquisition, the original seller acquires the right to occupy an apartment or house to which such stock is appurtenant. For purposes of the preceding sentence, there shall not be taken into account the fact that, by agreement with the corporation, the original seller or its nominee may not occupy the house or apartment without the prior approval of the corporation.

(C) Original seller defined

For purposes of this paragraph, the term "original seller" means the person from whom the corporation has acquired the apartments or houses (or leaseholds therein).

[See main edition for text of (c)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 531(a), 92 Stat. 2886.)

AMENDMENTS

1978—Subsec. (b)(6). Pub. L. 95-600, added subsec. (b)(6).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 531(b) of Pub. L. 95-600 provided that: "The amendment made by this section [amending subsec. (b)(6) of this section] shall apply to stock acquired after the date of the enactment of this Act [Nov. 6, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44C, 121, 913, 1034 of this title.

§ 217. Moving expenses

[See main edition for text of (a) to (g)]

(h) Special rules for foreign moves

(1) Increase in limitations

In the case of a foreign move—

(A) subsection (b)(1)(D) shall be applied by substituting "90 consecutive days" for "30 consecutive days",

(B) subsection (b)(3)(A) shall be applied by substituting "$4,500" for "$1,500" and by substituting "$6,000" for "$3,000", and

(C) subsection (b)(3)(B) shall be applied as if the last sentence of such subsection read as follows: "In the case of a husband and wife filing separate returns, subparagraph (A) shall be applied by substituting '$2,250' for '$4,500' and by substituting '$3,000' for '$6,000'."

(2) Allowance of certain storage fees

In the case of a foreign move, for purposes of this section, the moving expenses described in subsection (b)(1)(A) include the reasonable expenses—

(A) of moving household goods and personal effects to and from storage, and

(B) of storing such goods and effects for part or all of the period during which the new place of work continues to be the taxpayer's principal place of work.

(3) Foreign move

For purposes of this subsection, the term "foreign move" means the commencement of work by the taxpayer at a new principal place of work located outside the United States.

(4) United States defined

For purposes of this subsection and subsection (i), the term "United States" includes the possessions of the United States.

(i) Allowance of deductions in case of retirees or decedents who were working abroad

(1) In general

In the case of any qualified retiree moving expenses or qualified survivor moving expenses—

(A) this section (other than subsection (h)) shall be applied with respect to such expenses as if they were incurred in connection with the commencement of work by the taxpayer as an employee at a new prin-

cipal place of work located within the United States, and

(B) the limitations of subsection (c)(2) shall not apply.

(2) Qualified retiree moving expenses

For purposes of paragraph (1), the term "qualified retiree moving expenses" means any moving expenses—

(A) which are incurred by an individual whose former principal place of work and former residence were outside the United States, and

(B) which are incurred for a move to a new residence in the United States in connection with the bona fide retirement of the individual.

(3) Qualified survivor moving expenses

For purposes of paragraph (1), the term "qualified survivor moving expenses" means moving expenses—

(A) which are paid or incurred by the spouse or any dependent of any decedent who (as of the time of his death) had a principal place of work outside the United States, and

(B) which are incurred for a move which begins within 6 months after the death of such decedent and which is to a residence in the United States from a former residence outside the United States which (as of the time of the decedent's death) was the residence of such decedent and the individual paying or incurring the expense.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(As amended Pub. L. 95–615, title II, § 204, Nov. 8, 1978, 92 Stat. 3106.)

AMENDMENTS

1978—Subsec. (h). Pub. L. 95–615 added subsec. (h). Former subsec. (h) redesignated (j).

Subsec. (i). Pub. L. 95–615 added subsec. (i).

Subsec. (j). Pub. L. 95–615 redesignated former subsec. (h) as (j).

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 911, 1001, 1016, 1034, 3121, 3306, 3401 of this title; title 42 section 409.

[§ 218. Repealed. Pub. L. 95–600, title I, § 113(a)(1), Nov. 6, 1978, 92 Stat. 2778]

Section, added Pub. L. 92–178, title VII, § 702(a), Dec. 10, 1971, 85 Stat. 561, and amended Pub. L. 93–625, §§ 11(d), 12(b), Jan. 3, 1975, 88 Stat. 2120; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to contributions to candidates for public office.

EFFECTIVE DATE OF REPEAL

Repeal of section effective with respect to contributions the payment of which is made after Dec. 31, 1978, in taxable years beginning after such date, see section 113(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 41 of this title.

§ 219. Retirement savings

[See main edition for text of (a)]

(b) Limitations and restrictions

[See main edition for text of (1) to (3)]

(4) Recontributed amounts

No deduction is allowed under this section with respect to a rollover contribution described in section 402(a)(5), 403(a)(4), 403(b)(8), 408(d)(3), or 409(b)(3)(C).

[See main edition for text of (5) and (6)]

(7) Simplified employee pensions

In the case of an employer contribution on behalf of the employee to a simplified employee pension, paragraph (2) shall not apply with respect to the employer contribution and the limitation under paragraph (1) shall be the lesser of—

(A) 15 percent of compensation includible in the employee's gross income for the taxable year (determined without regard to the employer contribution to the simplified employee pension), or

(B) the sum of—

(i) the amount contributed by the employer to the simplified employee pension and included in gross income (but not in excess of $7,500), and

(ii) $1,500, reduced (but not below zero) by the amount described in clause (i).

In the case of an employee who is an officer, shareholder, or owner-employee described in section 408(k)(3), the amount referred to in subparagraph (B) shall be reduced by the amount of tax taken into account with respect to such individual under subparagraph (D) of section 408(k)(3).

(c) Definitions and special rules

[See main edition for text of (1) and (2)]

(3) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(4) Participation in governmental plans by certain individuals

(A) Members of reserve components

A member of a reserve component of the armed forces (as defined in section 261(a) of title 10) is not considered to be an active participant in a plan described in subsection (b)(2)(A)(iv) for a taxable year solely because he is a member of a reserve component unless he has served in excess of 90 days on active duty (other than active duty for training) during the year.

(B) Volunteer firefighters

An individual whose participation in a plan described in subsection (b)(2)(A)(iv) is based solely upon his activity as a volunteer firefighter and whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of $1,800 (when expressed as a single life annuity commencement at age 65) is not considered to be an active participant in such a plan for the taxable year.

(5) Excess contributions treated as contribution made during subsequent year for which there is an unused limitation

(A) In general

If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) the amount of such excess, or

(ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

(B) Amount contributed

For purposes of this paragraph, the amount contributed—

(i) shall be determined without regard to this paragraph, and

(ii) shall not include any rollover contribution.

(C) Special rule where excess deduction was allowed for closed year

Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 220 for a prior taxable year for which the period for assessing deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(As amended Pub. L. 95-600, title I, §§ 152(c), 156(c)(3), 157(a)(1), (b)(1), title VII, § 703(c)(1), Nov. 6, 1978, 92 Stat. 2798, 2803, 2939.)

AMENDMENTS

1978—Subsec. (b)(4). Pub. L. 95-600, § 156(c)(3), added "403(b)(8)" following "403(a)(4)".

Subsec. (b)(7). Pub. L. 95-600, § 152(c), added subsec. (b)(7).

Subsec. (c)(3). Pub. L. 95-600, § 157(a)(1), substituted "not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)" for "not later than 45 days after the end of such taxable year".

Subsec. (c)(4). Pub. L. 95-600, § 703(c)(1), substituted "subsection (b)(2)(A)(iv)" for "subsection (b)(3)(A)(iv)" wherever appearing.

Subsec. (c)(5). Pub. L. 95-600, § 157(b)(1), added subsec. (c)(5).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(4) of this section by section 156(c)(3) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1978, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600 set out as an Effective Date of 1978 Amendment note under section 403 of this title.

Amendment of subsec. (b)(7) of this section by section 152(c) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 408 of this title.

Amendment of subsecs. (c)(3) and (5) of this section by section 157(a)(1) and (b)(1) of Pub. L. 95-600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 402 of this title.

Section 157(a)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsec. (c)(3) of this section and section 220(c)(4) of this title] shall apply to taxable years beginning after December 31, 1977."

Amendment of subsec. (c)(4) by section 703(c)(1) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 157(b)(4)(A) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsec. (c)(5) of this section, section 220(c)(6) and 4973(b)(2) of this title] shall apply to the determination of deductions for taxable years beginning after December 31, 1975."

TRANSITIONAL RULES FOR ALLOWABLE DEDUCTIONS FOR FIRST TAXABLE YEAR BEGINNING IN 1978

Section 157(b)(4)(B) provided that: "If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 219(c)(5) or 220(c)(6) of the Internal Revenue Code of 1954 for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 220, 408, 409, 2039, 3401, 4973, 6047 of this title; title 29 section 1309.

§ 220. Retirement savings for certain married individuals

[*See main edition for text of* (a)]

(b) Limitation and restrictions

(1) Maximum deduction

The amount allowable as a deduction under subsection (a) to an individual for any taxable year may not exceed—

(A) twice the amount paid to the account, for the annuity, or for the bond, established for the individual or for his spouse to or for which the lesser amount was paid for the taxable year,

[*See main edition for text of* (B) *and* (C)]

whichever is the smallest amount.

[*See main edition for text of* (2) *and* (3)]

(4) Contributions after age 70½

No deduction is allowed under subsection (a) with respect to any payment described in subsection (a) which is made for a taxable year of an individual if either the individual or his spouse has attained age 70½ before the close of such taxable year.

(5) Recontributed amounts

No deduction is allowed under this section with respect to a rollover contribution described in section 402(a)(5), 403(a)(4), 403(b)(8), 408(d)(3), or 409(b)(3)(C).

[*See main edition for text of (6) and (7)*]

(c) Definitions and special rules

[*See main edition for text of (1) to (3)*]

(4) Time when contributions deemed made

For purposes of this section, a taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

[*See main edition for text of (5)*]

(6) Excess contributions treated as contribution made during subsequent year for which there is an unused limitation

(A) In general

If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) the amount of such excess, or

(ii) the amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

(B) Amount contributed

For purposes of this paragraph, the amount contributed—

(i) shall be determined without regard to this paragraph, and

(ii) shall not include any rollover contribution.

(C) Special rule where excess deduction was allowed for closed year

Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 219 for a prior taxable year for which the period for assessing a deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(As amended Pub. L. 95-600, title I, §§ 156(c)(3), 157(a)(2), (b)(2), title VII, § 703(c)(2), (3), Nov. 6, 1978, 92 Stat. 2803, 2804, 2939.)

AMENDMENTS

1978—Subsec. (b)(1)(A). Pub. L. 95-600, § 703(c)(2), substituted "amount paid to the account, for the annuity, or for the bond" for "amount paid to the account or annuity, or for the bond".

Subsec. (b)(4). Pub. L. 95-600, § 703(c)(3), inserted "described in subsection (a)" following "any payment".

Subsec. (b)(5). Pub. L. 95-600, § 156(c)(3), added "403(b)(8)" following "403(a)(4)".

Subsec. (c)(4). Pub. L. 95-600, § 157(a)(2), substituted "not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof)" for "not later than 45 days after the end of such taxable year".

Subsec. (c)(6). Pub. L. 95-600, § 157(b)(2), added subsec. (c)(6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1)(A), (4) by section 703(c)(2), (3) of Pub. L. 95-600, respectively, applicable to taxable years beginning after Dec. 31, 1976, see section 703(c)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Amendment of subsec. (b)(5) of this section by section 156(c)(3) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1978, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 403 of this title.

Amendment of subsec. (c)(4), (6), of this section by section 157(a)(2), (b)(2) of Pub. L. 95-600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 402 of this title.

Amendment of subsec. (c)(6) of this section by section 157(b)(2) of Pub. L. 95-600 applicable to the determination of deductions for taxable years beginning after Dec. 31, 1975, see section 157(b)(4)(A) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 219 of this title.

TRANSITIONAL RULES FOR ALLOWABLE DEDUCTIONS FOR FIRST TAXABLE YEAR BEGINNING IN 1978

Amount allowable as a deduction by reason of section 219(c)(5) of this title or subsec. (c)(6) of this section, shall be allowable only for taxpayer's first taxable year beginning in 1978, see section 157(b)(4)(B) of Pub. L. 95-600, set out as a note under section 219 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 219, 408, 2039, 2503, 3401, 4973 of this title.

PART VIII—SPECIAL DEDUCTIONS FOR CORPORATIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 527, 528, 535, 545, 556, 593, 822, 832, 857, 901, 1373, 1374, 1393 of this title.

§ 244. Dividends received on certain preferred stock

(a) General rule

In the case of a corporation, there shall be allowed as a deduction an amount computed as follows:

[*See main edition for text of (1)*]

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

[*See main edition for text of (3); (b)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(3), 92 Stat. 2820.)

AMENDMENTS

1978—Subsec. (a)(2)(B). Pub. L. 95-600 substituted "the highest rate of tax specified in section 11(b)" for "the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2)(B) of this section by section 301(b)(3) of Pub. L. 95-600 applicable to tax-

able years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

§ 247. Dividends paid on certain preferred stock of public utilities

(a) Amount of deduction

In the case of a public utility, there shall be allowed as a deduction an amount computed as follows:

[See main edition for text of 1)]

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

[See main edition for text of concluding par.; (b)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(4), 92 Stat. 2820.)

AMENDMENTS

1978—Subsec. (a)(2)(B). Pub. L. 95-600 substituted "the highest rate of tax specified in section 11(b)" for "the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2)(B) of this section by section 301(b)(4) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

§ 248. Organizational expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 535, 545, 556, 822, 857, 1247, 1373, 1374, 1393 of this title.

§ 250. Certain payments to the National Railroad Passenger Corporation

(a) General rule

If—

(1) any corporation which is a rail carrier (as defined in section 10102(17) of title 49) makes a payment in cash, rail passenger equipment, or services to the National Railroad Passenger Corporation (hereinafter in this section referred to as the "Passenger Corporation") pursuant to a contract entered into under section 401(a) of the Rail Passenger Service Act, and

(2) no stock in the Passenger Corporation is issued at any time to such corporation in connection with any contract entered into under such section 401(a),

then the amount of such payment shall (subject to subsection (c)) be allowed as a deduction for the taxable year in which it is made.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 95-473, § 2(a)(2)(C), Oct. 17, 1978, 92 Stat. 1464.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-473 substituted "rail carrier (as defined in section 10102(17) of title 49)" for "common carrier by railroad (as defined in section 1(3) of the Interstate Commerce Act (49 U.S.C. 1(3)))".

PART IX—ITEMS NOT DEDUCTIBLE

Sec.
280C. Portions of wages for which credit is claimed under section 44B.

AMENDMENTS

1977—Pub. L. 95-30, title II, § 202(c)(2), May 23, 1977, 91 Stat. 147, added item 280C.

§ 262. Personal, living, and family expenses

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427 set out as a note under section 62 of this title.

§ 263. Capital expenditures

[See main edition for text of (a) and (b)]

(c) Intangible drilling and development costs in the case of oil and gas wells and geothermal wells

Notwithstanding subsection (a), regulations shall be prescribed by the Secretary under this subtitle corresponding to the regulations which granted the option to deduct as expenses intangible drilling and development costs in the case of oil and gas wells and which were recognized and approved by the Congress in House Concurrent Resolution 50, Seventy-ninth Congress. Such regulations shall also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(3)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.

[See main edition for text of (d) to (f)]

(As amended Nov. 9, 1978, Pub. L. 95-618, title IV, § 402(a), 92 Stat. 3201.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-618 in subsec. heading inserted "and geothermal wells" following "gas wells" and in text added provision that such regulations also grant the option to deduct as expenses intangible drilling and development costs in the case of wells drilled for any geothermal deposit (as defined in section 613(e)(3)) to the same extent and in the same manner as such expenses are deductible in the case of oil and gas wells.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(e) of Pub. L. 95-618 provided that:

"(1) In general.—The amendments made by this section [amending sections 57, 263, 465, 751, and 1254 of this title] shall apply with respect to wells commenced on or after October 1, 1978, in taxable years ending on or after such date.

"(2) Election.—The taxpayer may elect to capitalize or deduct any costs to which section 263(c) of the Internal Revenue Code of 1954 applies by reason of the amendments made by this section [amending sections 57, 263, 465, 751, and 1254 of this title]. Any such election shall be made before the expiration of the time for filing claim for credit or refund of any overpayment of tax imposed by chapter 1 of such Code [section 1 et seq. of this title] with respect to the taxpay-

er's first taxable year to which the amendments made by this section apply and for which he pays or incurs costs to which such section 263(c) applies by reason of the amendments made by this section. Any election under this paragraph may be changed or revoked at any time before the expiration of the time referred to in the preceding sentence, but after the expiration of such time such election may not be changed or revoked."

§ 267. Losses, expenses, and interest with respect to transactions between related taxpayers

[See main edition for text of (a) to (d)]

(e) Rule where last day of 2½ month period falls on Sunday, etc.

For purposes of subsection (a)(2)—

(1) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day shall be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and

(2) the determination of what constitutes a legal holiday shall be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

(As amended Nov. 10, 1978, Pub. L. 95-628, § 2(a), 92 Stat. 3627.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-628 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(b) of Pub. L. 95-628 provided that: "The amendment made by subsection (a) [enacting subsec. (e) of this section] shall apply with respect to payments made after the date of the enactment of this Act [Nov. 10, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 48, 50B, 103, 163, 170, 178, 179, 274, 280A, 341, 368, 447, 464, 465, 503, 613A, 631, 707, 1235, 1237, 4946, 4951, 4975, 6166 of this title; title 29 section 1108.

§ 274. Disallowance of certain entertainment, etc., expenses

(a) Entertainment, amusement, or recreation

(1) In general

No deduction otherwise allowable under this chapter shall be allowed for any item—

[See main edition for text of (A)]

(B) Facility

With respect to a facility used in connection with an activity referred to in subparagraph (A).

In the case of an item described in subparagraph (A), the deduction shall in no event exceed the portion of such item which meets the requirements of subparagraph (A).

(2) Special rules

For purposes of applying paragraph (1)—

[See main edition for text of (A) and (B)]

(C) In the case of a country club, paragraph (1)(B) shall apply unless the taxpayer establishes that the facility was used primarily for the furtherance of the taxpayer's trade or business and that the item was directly related to the active conduct of such trade or business.

[See main edition for text of (b) to (g)]

(h) Foreign conventions

[See main edition for text of (1) and (2)]

(3) Transportation costs deductible in full only if at least one-half of the days are devoted to business related activities

In the case of any foreign convention, a deduction for the full expenses of transportation (determined after the application of paragraph (2)) to and from the site of such convention shall be allowed only if at least one-half of the total days of the trip, excluding the days of transportation to and from the site of such convention, are devoted to business related activities. If less than one-half of the total days of the trip, excluding the days of transportation to and from the site of the convention, are devoted to business related activities, no deduction for the expenses of transportation shall be allowed which exceeds the percentage of the days of the trip devoted to business related activities.

[See main edition for text of (4) and (5)]

(6) Definitions and special rules

For purposes of this subsection—

[See main edition for text of (A) to (C)]

(D) Subsection to apply to employer as well as to traveler

(i) Except as provided in clause (ii), this subsection shall apply to deductions otherwise allowable under section 162 or 212 to any person, whether or not such person is the individual attending the foreign convention. For the purposes of the preceding sentence such person shall be treated, with respect to each individual, as having selected the same 2 foreign conventions as were selected by such individual.

(ii) This subsection shall not deny a deduction to any person other than the individual attending the foreign convention with respect to any amount paid by such person to or on behalf of another person if includible in the gross income of such other person. The preceding sentence shall not apply if such amount is required to be included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.

(E) Individuals residing in foreign countries

For purposes of this subsection, in the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary that he was a bona fide resident of a foreign country at the time that he attended a convention in such foreign country, such individual's attendance at such convention shall not be considered as attendance at a foreign convention.

[*See main edition for text of (7); (i)*]

(As amended Pub. L. 95-600, title III, § 361(a), (b), title VII, § 701(g)(1)-(3), Nov. 6, 1978, 92 Stat. 2847, 2903, 2904.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 361(a), substituted provisions allowing no deduction for expenses paid or incurred with respect to a facility which is used in conjunction with an activity which is of a type generally considered to constitute entertainment, amusement, or recreation for provisions allowing a deduction for expenses paid or incurred with respect to a facility if the facility used is primarily for the furtherance of the taxpayer's business, and the expense is "directly related" to the active conduct of taxpayer's business.

Subsec. (a)(2)(C). Pub. L. 95-600, § 361(b), added subsec. (a)(2)(C).

Subsec. (h)(3). Pub. L. 95-600, § 701(g)(3), substituted in first sentence "at least one-half" for "more than one-half".

Subsec. (h)(6)(D). Pub. L. 95-600, § 701(g)(1), designated existing provisions as cl. (i), inserted introductory phrase "Except as provided in clause (ii)" and substituted "For the purposes" for "For purpose", and added cl. (ii).

Subsec. (h)(6)(E). Pub. L. 95-600, § 701(g)(2), added subsec. (h)(6)(E).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 361(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (a)(1), (2)(C) of this section] shall apply to items paid or incurred after December 31, 1978, in taxable years ending after such date."

Section 701(g)(4) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsec. (h)(3), (6)(D), and (6)(E) of this section] shall apply to conventions beginning after December 31, 1976."

§ 275. Certain taxes

(a) General rule

No deduction shall be allowed for the following taxes:

[*See main edition for text of (1) to (5)*]

(6) Taxes imposed by chapters 41, 42, 43, and 44.

[*See main edition for text of (b)*]

(Added Pub. L. 88-272, title II, § 207(b)(3)(A), Feb. 26, 1964, 78 Stat. 42, and amended Pub. L. 93-406, title II, § 1016(a)(1), Sept. 2, 1974, 88 Stat. 929; Pub. L. 94-455, title XIII, § 1307(d)(2)(A), title XVI, § 1605(b)(1), title XIX, § 1901(a)(39), Oct. 4, 1976, 90 Stat. 1727, 1754, 1771, as amended Pub. L. 95-600, title VII, § 701(t)(3)(B), Nov. 6, 1978, 92 Stat. 2912.)

CODIFICATION

Pub. L. 95-600, § 701(t)(3)(B), (effective Oct. 4, 1976, see Pub. L. 95-600, § 701(t)(5), set out as an Effective Date of 1978 Amendment note under section 859 of this title) repealed § 1605(b)(1) of Pub. L. 94-455, cited as a credit to this section, which had duplicated the amendment to subsec. (a)(6) made by § 1307(d)(2)(A) of Pub. L. 94-455.

§ 280. Certain expenditures incurred in production of films, books, records, or similar property

(a) General rule

In the case of an individual, except in the case of production costs which are charged to capital account, amounts attributable to the production of a film, sound recording, book, or similar property which are otherwise deductible under this chapter shall be allowed as deductions only in accordance with the provisions of subsection (b). For purposes of this section, an electing small business corporation (as defined in section 1371(b)), a personal holding company (as defined in section 542), and a foreign personal holding company (as defined in section 552) shall be treated as an individual.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 95-600, title VII, § 701(m)(2), Nov. 6, 1978, 92 Stat. 2907.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 substituted "In the case of an individual, except" for "Except in the case of a corporation (other than an electing small business corporation (as defined in section 1371(b) or a personal holding company (as defined in section 542) and except" and added provision that for purposes of this section, an electing small business corporation, a personal holding company, and a foreign personal holding company, as defined in sections 1371(b), 542, and 552, shall be treated as an individual.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(m)(3)(B) of Pub. L. 95-600 provided that: "The amendments made by paragraph (2) [amending subsec. (a) of this section] shall take effect as if included in the amendment made by section 210(a) of the Tax Reform Act of 1976 [Pub. L. 94-455, title II, § 210(a), Oct. 4, 1976, 90 Stat. 1544]."

§ 280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

[*See main edition for text of (a) and (b)*]

(c) Exceptions for certain business or rental use; limitation on deductions for such use

[*See main edition for text of (1) to (3)*]

(4) Use in providing day care services

(A) In general

Subsection (a) shall not apply to any item to the extent that such item is allocable to the use of any portion of the dwelling unit on a regular basis in the taxpayer's trade or business of providing day care for children, for individuals who have attained age 65, or for individuals who are physically or mentally incapable of caring for themselves.

(B) Licensing, etc., requirement

Subparagraph (A) shall apply to items accruing for a period only if the owner or operator of the trade or business referred to in subparagraph (A)—

(i) has applied for (and such application has not been rejected),

(ii) has been granted (and such granting has not been revoked), or

(iii) is exempt from having,

a license, certification, registration, or approval as a day care center or as a family or group day care home under the provisions of any applicable State law. This subparagraph shall apply only to items accruing in periods beginning on or after the first day

of the first month which begins more than 90 days after the date of the enactment of the Tax Reduction and Simplification Act of 1977.

(C) Allocation formula

If a portion of the taxpayer's dwelling unit used for the purposes described in subparagraph (A) is not used exclusively for those purposes, the amount of the expenses attributable to that portion shall not exceed an amount which bears the same ratio to the total amount of the items allocable to such portion as the number of hours the portion is used for such purposes bears to the number of hours the portion is available for use.

(5) Limitation on deductions

In the case of a use described in paragraph (1), (2), or (4), and in the case of a use described in paragraph (3) where the dwelling unit is used by the taxpayer during the taxable year as a residence, the deductions allowed under this chapter for the taxable year by reason of being attributed to such use shall not exceed the excess of—

(A) the gross income derived from such use for the taxable year, over

(B) the deductions allocable to such use which are allowable under this chapter for the taxable year whether or not such unit (or portion thereof) was so used.

(d) Use as residence

[*See main edition for text of (1) and (2)*]

(3) Rental of principal residence

(A) In general

For purposes of applying subsection (c)(5) to deductions allocable to a qualified rental period, a taxpayer shall not be considered to have used a dwelling unit for personal purposes for any day during the taxable year which occurs before or after a qualified rental period described in subparagraph (B)(i), or before a qualified rental period described in subparagraph (B)(ii), if with respect to such day such unit constitutes the principal residence (within the meaning of section 1034) of the taxpayer.

(B) Qualified rental period

For purposes of subparagraph (A), the term "qualified rental period" means a consecutive period of—

(i) 12 or more months which begins or ends in such taxable year, or

(ii) less than 12 months which begins in such taxable year and at the end of which such dwelling unit is sold or exchanged, and

for which such unit is rented to a person other than a member of the family (as defined in section 267(c)(4)) of the taxpayer, or is held for rental, at a fair rental.

[*See main edition for text of (e) to (g)*]

(As amended Pub. L. 95-30, title III, § 306(a), (b), May 23, 1977, 91 Stat. 152, 153; Pub. L. 95-600, title VII, § 701(h)(1), Nov. 6, 1978, 92 Stat. 2904.)

REFERENCES IN TEXT

The date of enactment of the Tax Reduction and Simplification Act of 1977, referred to in subsec. (c)(4)(B), is the date of enactment of Pub. L. 95-30, 91 Stat. 126, which was May 23, 1977.

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-600 added par. (3).

1977—Subsec. (c)(4). Pub. L. 95-30, § 306(a), added subsec. (c)(4). Former subsec. (c)(4) redesignated (c)(5).

Subsec. (c)(5). Pub. L. 95-30, § 306(a), (b), redesignated former subsec. (c)(4) as (c)(5) and, in subsec. (c)(5) as so redesignated, substituted "paragraph (1), (2), or (4)" for "paragraph (1) or (2)" in the provisions preceding subpar. (A).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(h)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending subsec. (d) of this section] shall take effect as if included in section 280A of the Internal Revenue Code of 1954, as such provision was added to such Code by section 601(a) of the Tax Reform Act of 1976 [Pub. L. 94-455, title VI, § 601(a), Oct. 4, 1976, 90 Stat. 1569]."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 306(c) of Pub. L. 95-30 provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1975."

§ 280B. Demolition of certain historic structures

[*See main edition for text of (a)*]

(b) Special rule for registered historic districts

For purposes of this section, any building or other structure located in a registered historic district (as defined in section 191(d)(2)) shall be treated as a certified historic structure unless the Secretary of the Interior has certified that such structure is not a certified historic structure, and that such structure is not of historic significance to the district, and if such certification occurs after the beginning of the demolition of such structure, the taxpayer has certified to the Secretary that, at the time of such demolition, he in good faith was not aware of the certification requirement by the Secretary of the Interior.

(As amended Pub. L. 95-600, title VII, § 701(f)(5), Nov. 6, 1978, 92 Stat. 2902.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600 substituted "registered historic district (as defined in section 191(d)(2))" for "Registered Historic District" and "Secretary of the Interior has certified that such structure is not a certified historic structure, and that such structure is not of historic significance to the district, and if such certification occurs after the beginning of the demolition of such structure, the taxpayer has certified to the Secretary that, at the time of such demolition, he in good faith was not aware of the certification requirement by the Secretary of the Interior" for "Secretary of the Interior has certified, prior to the demolition of such structure, that such structure is not of historic significance to the district".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b) by section 701(f)(5) of Pub. L. 95-600 effective as if included within the enactment of this section by section 2124 of Pub. L. 94-455, see section 701(f)(8) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 191 of this title.

§ 280C. Portion of wages for which credit is claimed under section 40 or 44B

(a) Rule for section 40 credit

No deduction shall be allowed for that portion of the work incentive program expenses paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 40 (relating to credit for expenses of work incentive programs) determined without regard to the provisions of section 50A(a)(2) (relating to limitation based on amount of tax). In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 50B(g)(1)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 50B(g)(2), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under paragraphs (1) and (2) of section 50B(g).

(b) Rule for section 44B credit

No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 44B (relating to credit for employment of certain new employees) determined without regard to the provisions of section 53 (relating to limitation based on amount of tax). In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 52(a)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 52(b)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subsections (a) and (b) of section 52.

(Added Pub. L. 95-30, title II, § 202(c)(1), May 23, 1977, 91 Stat. 147, and amended Pub. L. 95-600, title III, § 322(d)(1), Nov. 6, 1978, 92 Stat. 2838.)

AMENDMENTS

1978—Pub. L. 95-600 in catchline substituted "section 40 or 44B" for "section 44B" and in text designated existing provisions as subsec. (b) and added subsec. (a).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of catchline and subsecs. (a) and (b) of this section by section 322(d) of Pub. L. 95-600 applicable to work incentive program expenses paid or incurred after Dec. 31, 1978, in taxable years ending after such date, see section 322(e)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 50A of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

PART X—TERMINAL RAILROAD CORPORATIONS AND THEIR SHAREHOLDERS

§ 281. Terminal railroad corporations and their shareholders

[*See main edition for text of* (a) *to* (c)]

(d) Definitions

For purposes of this section—

(1) Terminal railroad corporation

The term "terminal railroad corporation" means a domestic railroad corporation which is not a member, other than as a common parent corporation, of an affiliated group (as defined in section 1504) and—

(A) all of the shareholders of which are domestic railroad corporations providing transportation subject to subchapter I of chapter 105 of title 49;

(B) the primary business of which is the providing of railroad terminal and switching facilities and services to domestic railroad corporations providing transportation subject to subchapter I of chapter 105 of title 49 and to the shippers and passengers of such railroad corporations;

[*See main edition for text of* (C), (D), (2) *and* (3); (e)]

(As amended Pub. L. 95-473, § 2(a)(2)(D), (E), Oct. 17, 1978, 92 Stat. 1464.)

AMENDMENTS

1978—Subsec. (d)(1)(A). Pub. L. 95-473, § 2(a)(2)(D), substituted "providing transportation subject to subchapter I of chapter 105 of title 49" for "subject to part I of the Interstate Commerce Act (49 U.S.C. 1 and following)".

Subsec. (d)(1)(B). Pub. L. 95-473, § 2(a)(2)(E), substituted "providing transportation subject to subchapter I of chapter 105 of title 49" for "subject to part I of the Interstate Commerce Act".

Subchapter C—Corporate Distributions and Adjustments

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 458, 466, 997, 1011, 1012, 1016, 1081 of this title.

PART I—DISTRIBUTIONS BY CORPORATIONS

SUBPART A—EFFECTS ON RECIPIENTS

§ 301. Distributions of property

[*See main edition for text of* (a)]

(b) Amount distributed

(1) General rule

For purposes of this section, the amount of any distribution shall be—

[*See main edition for text of* (A)]

(B) Corporate distributees

If the shareholder is a corporation, unless subparagraph (D) applies, the amount of money received, plus whichever of the following is the lesser:

(i) the fair market value of the other property received; or

(ii) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of the other property received, increased in the amount of gain recognized to the distributing corporation on the distribution.

[See main edition for text of (C), (D), (2) and (3); (c)]

(d) Basis

The basis of property received in a distribution to which subsection (a) applies shall be—

[See main edition for text of (1)]

(2) Corporate distributees

If the shareholder is a corporation, unless paragraph (3) applies, whichever of the following is the lesser:

(A) the fair market value of such property; or

(B) the adjusted basis (in the hands of the distributing corporation immediately before the distribution) of such property, increased in the amount of gain recognized to the distributing corporation on the distribution.

[See main edition for text of (3) and (4); (e)]

(As amended Nov. 10, 1978, Pub. L. 95-628, § 3(a), (b), 92 Stat. 3627.)

AMENDMENTS

1978—Subsec. (b)(1)(B)(ii). Pub. L. 95-628, § 3(a), substituted "amount of gain recognized to the distributing corporation on the distribution" for "amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

Subsec. (d)(2)(B). Pub. L. 95-628, § 3(b), substituted "amount of gain recognized to the distributing corporation on the distribution" for "amount of gain to the distributing corporation which is recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(d) of Pub. L. 95-628 provided that: "The amendments made by this section [to subsecs. (b)(1)(B)(ii) and (d)(2)(B) of this section and section 312(c) of this title] shall apply to distributions made after the date of the enactment of this Act [Nov. 10, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 245, 279, 302, 305, 306, 316, 317, 331, 341, 356, 877, 1024, 1394, 2107, 2501 of this title.

§ 303. Distributions in redemption of stock to pay death taxes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 304, 306, 311, 312, 382, 537, 1248, 6166, 6166A of this title.

§ 306. Dispositions of certain stock

(a) General rule

If a shareholder sells or otherwise disposes of section 306 stock (as defined in subsection (c))—

[See main edition for text of (1) and (2)]

(3) Ordinary income from sale or redemption of section 306 stock which is carryover basis property adjusted for 1976 value

(A) In general

If any section 306 stock was distributed before January 1, 1977, and if the adjusted basis of such stock in the hands of the person disposing of it is determined under section 1023 (relating to carryover basis), then the amount treated as ordinary income under paragraph (1)(A) of this subsection (or the amount treated as a dividend under section 301(c)(1)) shall not exceed the excess of the amount realized over the sum of—

(i) the adjusted basis of such stock on December 31, 1976, and

(ii) any increase in basis under section 1023(h).

(B) Redemption must be described in section 302(b)

Subparagraph (A) shall apply to a redemption only if such redemption is described in paragraph (1), (2), or (4) of section 302(b).

(b) Exceptions

Subsection (a) shall not apply—

[See main edition for text of (1) to (4)]

(5) Section 303 redemptions

To the extent that section 303 applies to a distribution in redemption of section 306 stock.

[See main edition for text of (c) to (h)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(a)(1), (2), 92 Stat. 2925.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 702(a)(1), added par. (3).

Subsec. (b) Pub. L. 95-600, § 702(a)(2), added par. (5).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(a)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [adding subsecs. (a)(3) and (b)(5) of this section] shall apply to the estates of decedents dying after December 31, 1979."

SUBPART B—EFFECTS ON CORPORATION

§ 311. Taxability of corporation on distribution

[See main edition for text of (a) to (c)]

(d) Appreciated property used to redeem stock

[See main edition for text of (1)]

(2) Exceptions and limitations

Paragraph (1) shall not apply to—

[See main edition for text of (A) to (F)]

(G) a distribution of stock to a distributee which is not an organization exempt from tax under section 501(a), if with respect to such distributee, subsection (a)(1) or (b)(1) of section 1101 (relating to distributions

pursuant to Bank Holding Company Act) applies to such distribution.

[(H) Redesignated (G).]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(2)(B), 92 Stat. 2941.)

REFERENCES IN TEXT

The Bank Holding Company Act, referred to in subsec. (d)(2)(G), probably means act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of Title 12, Banks and Banking. See section 1103 of Title 26. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables volume.

AMENDMENTS

1978—Subsec. (d)(2)(G). Pub. L. 95-600 redesignated former subsec. (d)(2)(H) as (d)(2)(G).

Subsec. (d)(2)(H). Pub. L. 95-600 redesignated subsec. (d)(2)(H) as (d)(2)(G).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 703(j)(2)(C) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [amending subsec. (d)(2)(G) of this section] shall take effect as if included in section 2(b) of the Bank Holding Company Tax Act of 1976 [amending this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 995 of this title.

§ 312. Effect on earnings and profits

[*See main edition for text of* (a) *and* (b)]

(c) Adjustments for liabilities, etc.

In making the adjustments to the earnings and profits of a corporation under subsection (a) or (b), proper adjustment shall be made for—

[*See main edition for text of* (1) *and* (2)]

(3) any gain recognized to the corporation on the distribution.

[*See main edition for text of* (d) *to* (k)]

(As amended Nov. 10, 1978, Pub. L. 95-628, § 3(c), 92 Stat. 3627.)

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95-628 substituted "gain recognized to the corporation on the distribution" for "gain to the corporation recognized under subsection (b), (c), or (d) of section 311, under section 341(f), or under section 617(d)(1), 1245(a), 1250(a), 1251(c), 1252(a), or 1254(a)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-628 applicable to distributions made after Nov. 10, 1978, see section 3(d) of Pub. L. 95-628, set out as an Effective Date of 1978 Amendment note under section 301 of this title.

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

§ 316. Dividend defined

[*See main edition for text of* (a)]

(b) Special rules

[*See main edition for text of* (1) *and* (2)]

(3) Deficiency dividend distributions by a regulated investment company or real estate investment trust

The term "dividend" also means any distribution of property (whether or not a dividend as defined in subsection (a)) which constitutes a "deficiency dividend" as defined in section 860(f).

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 362(d)(1), 92 Stat. 2851.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-600 inserted in par. heading "regulated investment company or" following "distributions by a" and substituted in text "section 860(f)" for "section 859(d)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(3) of this section by section 362(d)(1) of Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 860 of this title.

§ 318. Constructive ownership of stock

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 105, 129, 302, 304, 306, 334, 367, 382, 408, 465, 545, 856, 958, 995, 1379, 2036, 6038 of this title.

PART II—CORPORATE LIQUIDATIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 306, 904 of this title.

SUBPART A—EFFECTS ON RECIPIENTS

§ 332. Complete liquidation of subsidiaries

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 334, 337, 341, 367, 381, 453, 1101, 1245, 1250, 1251 of this title.

§ 333. Election as to recognition of gain in certain liquidations

LIQUIDATIONS BEFORE JANUARY 1, 1966

Section 225(h) of Pub. L. 88-272 provided that in the case of corporations referred to in former subsec. (g)(3) of this section the amendments made by section 225 of Pub. L. 88-272 do not apply if there is a complete liquidation of such corporation and if the distribution of all the property under such liquidation occurs before Jan. 1, 1966, except for certain liquidations to which section 332 of this title applies.

§ 334. Basis of property received in liquidation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 318, 337, 381, 453, 617 of this title.

SUBPART B—EFFECTS ON CORPORATION

§ 337. Gain or loss on sales or exchanges in connection with certain liquidations

[*See main edition for text of (a) and (b)*]

(c) Limitations

[*See main edition for text of (1)*]

(2) Liquidations to which section 332 applies

In the case of a sale or exchange following the adoption of a plan of complete liquidation, if section 332 applies with respect to such liquidation, then—

(A) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(1), this section shall not apply; or

(B) if the basis of the property of the liquidating corporation in the hands of the distributee is determined under section 334(b)(2), this section shall apply only to that portion (if any) of the gain which is not greater than the excess of (i) that portion of the adjusted basis (adjusted for any adjustment required under the second sentence of section 334(b)(2)) of the stock of the liquidating corporation which is allocable, under regulations prescribed by the Secretary, to the property sold or exchanged, over (ii) the adjusted basis, in the hands of the liquidating corporation, of the property sold or exchanged.

(3) Special rule for affiliated group

(A) In general

Paragraph (2) shall not apply to a sale or exchange by a corporation (hereinafter in this paragraph referred to as the "selling corporation") if—

(i) within the 12-month period beginning on the date of the adoption of a plan of complete liquidation by the selling corporation, the selling corporation and each distributee corporation is completely liquidated, and

(ii) none of the complete liquidations referred to in clause (i) is a liquidation with respect to which section 333 applies.

(B) Definitions

For purposes of subparagraph (A)—

(i) The term "distributee corporation" means a corporation in the chain of includible corporations to which the selling corporation or a corporation above the selling corporation in such chain makes a distribution in complete liquidation within the 12-month period referred to in subparagraph (A)(i).

(ii) The term "chain of includible corporation" includes, in the case of any distribution, any corporation which (at the time of such distribution) is in a chain of includible corporations for purposes of section 1504(a) (determined without regard to the exceptions contained in section 1504(b)). Such term includes, where appropriate, the common parent corporation.

[*See main edition for text of (d)*]

(e) Special rule for involuntary conversions

If—

(1) there is an involuntary conversion (within the meaning of section 1033) of property of a distributing corporation and there is a complete liquidation of such corporation which qualifies under subsection (a),

(2) the disposition of the converted property (within the meaning of clause (ii) of section 1033(a)(2)(E)) occurs during the 60-day period which ends on the day before the first day of the 12-month period, and

(3) such corporation elects the application of this subsection at such time and in such manner as the Secretary may by regulations prescribe,

then for purposes of this section such disposition shall be treated as a sale or exchange occurring within the 12-month period.

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(i)(1), 92 Stat. 2904; Nov. 10, 1978, Pub. L. 95-628, § 4(a), 92 Stat. 3628.)

AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95-600 struck out last sentence making par. (2) inapplicable to a sale or exchange by a member of an affiliated group of corporations, as defined in section 1504(a) (but without regard to the exceptions contained in section 1504(b)), if each member of such group (including the common parent corporation) which receives, within the 12-month period on the date of the adoption of a plan of complete liquidation by the corporation which made the sale or exchange, a distribution in complete liquidation from any other member of such group is itself completely liquidated within such 12-month period, now covered in subsec. (c)(3).

Subsec. (c)(3). Pub. L. 95-600 added subsec. (c)(3).

Subsec. (e). Pub. L. 95-628 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 4(b) of Pub. L. 95-628 provided that: "The amendment made by subsection (a) [enacting subsec. (e) of this section] shall apply with respect to dispositions of the converted property (within the meaning of clause (ii) of section 1033(a)(2)(E) of the Internal Revenue Code of 1954) occurring after the date of the enactment of this Act [Nov. 10, 1978] in taxable years ending after such date."

Section 701(i)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending subsec. (c) of this section] shall apply to sales or exchanges made pursuant to a plan of complete liquidation adopted after December 31, 1975."

SUBPART C—COLLAPSIBLE CORPORATIONS

§ 341. Collapsible corporations

(a) Treatment of gain to shareholders

Gain from—

(1) the sale or exchange of stock of a collapsible corporation,

(2) a distribution in partial or complete liquidation of a collapsible corporation, which distribution is treated under this part as in part or full payment in exchange for stock, and

(3) a distribution made by a collapsible corporation which, under section 301(c)(3)(A), is treated, to the extent it exceeds the basis of the stock, in the same manner as a gain from the sale or exchange of property,

to the extent that it would be considered (but for the provisions of this section) as gain from the sale or exchange of a capital asset held for more than 1 year shall, except as otherwise provided in this section, be considered as ordinary income.

[See main edition for text of (b) to (f)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for substitution of "1 year" for "9 months" in subsec. (a) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 333, 337, 453 of this title.

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

SUBPART A—CORPORATE ORGANIZATIONS

§ 351. Transfer to corporation controlled by transfer

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 311, 334, 341, 357, 358, 362, 367, 382, 613A, 683, 721, 995, 1245, 1250, 1251 of this title.

SUBPART B—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

§ 354. Exchanges of stock and securities in certain reorganizations

[See main edition for text of (a) and (b)]

(c) Certain railroad reorganizations

Notwithstanding any other provision of this subchapter, subsection (a)(1) (and so much of section 356 as relates to this section) shall apply with respect to a plan of reorganization (whether or not a reorganization within the meaning of section 368(a)) for a railroad approved by the Interstate Commerce Commission under section 77 of the Bankruptcy Act, or under subchapter IV of chapter 113 of title 49, as being in the public interest.

[See main edition for text of (d)]

(As amended Oct. 17, 1978, Pub. L. 95-473, § 2(a)(2)(F), 92 Stat. 1465.)

REFERENCES IN TEXT

Section 77 of the Bankruptcy Act, referred to in subsec. (c), was repealed effective Oct. 1, 1978 by Pub. L. 95-598, Nov. 6, 1978, §§ 401(a), 402(a), 92 Stat. 2683. See section 1161 et seq. of Title 11, Bankruptcy.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-473 substituted "subchapter IV of chapter 113 of title 49" for "section 20b of the Interstate Commerce Act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 83, 332, 356, 358, 367, 381, 382, 425, 1101 of this title.

§ 355. Distribution of stock and securities of a controlled corporation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 83, 306, 312, 355, 356, 358, 367, 368, 425, 815, 877, 995, 1223, 2107, 2501, 6166, 6166A of this title.

§ 356. Receipt of additional consideration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 83, 306, 312, 354, 355, 358, 367, 368, 425, 1101, 1223, 6166, 6166A of this title.

§ 357. Assumption of liability

[See main edition for text of (a) and (b)]

(c) Liabilities in excess of basis

[See main edition for text of (1) and (2)]

(3) Certain liabilities excluded

(A) In general

If—

(i) the taxpayer's taxable income is computed under the cash receipts and disbursements method of accounting, and

(ii) such taxpayer transfers, in an exchange to which section 351 applies, a liability which is either—

(I) an account payable payment of which would give rise to a deduction, or

(II) an amount payable which is described in section 736(a),

then, for purposes of paragraph (1), the amount of such liability shall be excluded in determining the amount of liabilities assumed or to which the property transferred is subject.

(B) Exception

Subparagraph (A) shall not apply to any liability to the extent that the incurrence of the liability resulted in the creation of, or an increase in, the basis of any property.

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 365(a), 92 Stat. 2854.)

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95-600 added subsec. (c)(3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 365(c) of Pub. L. 95-600 provided that: "The amendments made by subsection (a) [amending subsec. (c)(3) of this section] and (b) [amending section 358(d) of this title] shall apply to transfers occurring on or after the date of the enactment of this Act [Nov. 6, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 358, 371 of this title.

§ 358. Basis to distributees

[See main edition for text of (a) to (c)]

(d) Assumption of liability

(1) In general

Where, as part of the consideration to the taxpayer, another party to the exchange as-

sumed a liability of the taxpayer or acquired from the taxpayer property subject to a liability, such assumption or acquisition (in the amount of the liability) shall, for purposes of this section, be treated as money received by the taxpayer on the exchange.

(2) Exception

Paragraph (1) shall not apply to the amount of any liability excluded under section 357(c)(3).

[*See main edition for text of* (e)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 365(b), 92 Stat. 2855.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-600 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (d) of this section by section 365(b) of Pub. L. 95-600 applicable to transfers occurring on or after Nov. 6, 1978, see section 365(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 357 of this title.

SUBPART C—EFFECTS ON CORPORATION

§ 361. Nonrecognition of gain or loss to corporation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 332, 341, 357, 358, 367, 381, 1245, 1250, 1251 of this title.

SUBPART D—SPECIAL RULE; DEFINITIONS

§ 368. Definitions relating to corporate reorganizations

(a) Reorganization

[*See main edition for text of* (1)]

(2) Special rules relating to paragraph (1)

[*See main edition for text of* (A) *to* (E)]

(F) Certain transactions involving 2 or more investment companies

[*See main edition for text of* (i) *and* (ii)]

(iii) For purposes of this subparagraph the term "investment company" means a regulated investment company, a real estate investment trust, or a corporation 50 percent or more of the value of whose total assets are stock and securities and 80 percent or more of the value of whose total assets are assets held for investment. In making the 50-percent and 80-percent determinations under the preceding sentence, stock and securities in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and a corporation shall be considered a subsidiary if the parent owns 50 percent or more of the combined voting power of all classes of stock entitled to vote, or 50 percent or more of the total value of shares of all classes of stock outstanding.

[*See main edition for text of* (iv) *and* (v)]

(vi) If an investment company which does not meet the requirements of clause (ii) acquires assets of another corporation, clause (i) shall be applied to such investment company and its shareholders and security holders as though its assets had been acquired by such other corporation. If such investment company acquires stock of another corporation in a reorganization described in section 368(a)(1)(B), clause (i) shall be applied to the shareholders of such investment company as though they had exchanged with such other corporation all of their stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange. For purposes of section 1001, the deemed acquisition or exchange referred to in the two preceding sentences shall be treated as a sale or exchange of property by the corporation and by the shareholders and security holders to which clause (i) is applied.

(vii) For purposes of clauses (ii) and (iii), the term "securities" includes obligations of State and local governments, commodity futures contracts, shares of regulated investment companies and real estate investment trusts, and other investments constituting a security within the meaning of the Investment Company Act of 1940 (15 U.S.C. 80a-2(36)).[1]

(viii) In applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) shall be treated as including a reference to an investment company and the determination of whether a corporation is an investment company shall be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).

[*See main edition for text of* (b) *and* (c)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(j)(1), 92 Stat. 2905.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (a)(2)(F)(vii), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified principally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

AMENDMENTS

1978—Subsec. (a)(2)(F). Pub. L. 95-600 substituted in cl. (iii), first sentence, "50 percent or more" and "80 percent or more" for "more than 50 percent" and "more than 80 percent"; substituted in cl. (vi), first sentence, "does not meet the requirements" for "is not diversified within the meaning"; struck from cl. (vi), second sentence, "(hereafter referred to as the ('actual

[1] So in original. A reference to 15 U.S.C. 80a-2(a)(36) was probably intended.

acquisition')" following "section 368(a)(1)(B)" and "and security holders" following "the shareholders" and substituted "stock in such company for stock having a fair market value equal to the fair market value of their stock of such investment company immediately after the exchange" for "stock in such investment company for a percentage of the value of the total outstanding stock of the other corporation equal to the percentage of the value of the total outstanding stock of such investment company which such shareholders own immediately after the actual acquisition"; and added cls. (vii) and (viii).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(j)(2) of Pub. L. 95-600 provided that:

"(A) Except as provided in subparagraphs (B) and (C), the amendments made by paragraph (1) [amending subsec. (a)(2)(F) of this section] shall apply as if included in section 368(a)(2)(F) of the Internal Revenue Code of 1954 as added by section 2131(a) of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, § 2131(a), Oct. 4, 1976, 90 Stat. 1922].

"(B) Clause (viii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to losses sustained after September 26, 1977.

"(C) Clause (vii) of section 368(a)(2)(F) of the Internal Revenue Code of 1954 (as added by paragraph (1)) shall apply only with respect to transfers made after September 26, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247, 249, 279, 306, 351, 354, 355, 357, 381, 382, 402, 409A, 512, 815, 995, 1101, 1103, 1232, 1244, 4912, 4920, 6166, 6166A, 6901 of this title; title 12 section 1717.

PART IV—INSOLVENCY REORGANIZATIONS

§ 371. Reorganization in certain receivership and bankruptcy proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247, 341, 357, 358, 372, 1232, 1245, 1250, 1251 of this title; title 11 App. section 346.

§ 374. Gain or loss not recognized in certain railroad reorganizations

[*See main edition for text of* (a) *to* (d)]

(e) Use of expired net operating loss carryovers to offset income arising from certain railroad reorganization proceedings

(1) In general

If—

(A) any corporation receives or accrues any amount pursuant to—

[*See main edition for text of* (i) *to* (iii)]

(iv) a redemption of a certificate of value of the United States Railway Association issued under section 306 of such Act to such corporation (or issued to another member of the same affiliated group (within the meaning of section 1504) as such corporation for their taxable years which included March 31, 1967),

[*See main edition for text of* (B) *and* (C)]

then such net operating loss shall be a net operating loss carryover to the taxable year described in subparagraph (B) but only for use (to the extent not theretofore used under this subsection to offset other amounts) to offset the portion referred to in subparagraph (B).

[*See main edition for text of* (2)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 369(a), 92 Stat. 2857.)

AMENDMENTS

1978—Subsec. (e)(1)(A)(iv). Pub. L. 95-600 substituted "issued under section 306 of such Act to such corporation (or issued to another member of the same affiliated group (within the meaning of section 1504) as such corporation for their taxable years which included March 31, 1967)" for "issued to such corporation under section 306 of such Act".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 369(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (e)(1)(A)(iv) of this section] shall apply to taxable years ending after March 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 250, 341, 354, 357, 358, 372, 617, 1232, 1245, 1250, 1251 of this title.

PART V—CARRYOVERS

Sec.
383. Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, foreign taxes, and capital losses.

AMENDMENTS

1977—Pub. L. 95-30, title II, § 202(d)(3)(D), May 23, 1977, 91 Stat. 148, added "new employee credits," following "work incentive program credits," in item 383.

§ 381. Carryovers in certain corporate acquisitions

[*See main edition for text of* (a) *and* (b)]

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

[*See main edition for text of* (1) *to* (24)]

(25) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

(26) Credit under section 44B for employment of certain new employees

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 44B, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 44B in respect of the distributor or transferor corporation.

[*See main edition for text of* (d)]

(As amended May 23, 1977, Pub. L. 95-30, title II, § 202(d)(3)(A), 91 Stat. 148; Nov. 6, 1978,

Pub. L. 95-600, title III, § 362(d)(2), 92 Stat. 2851.)

AMENDMENTS

1978—Subsec. (c)(25). Pub. L. 95-600 substituted in par. heading "regulated investment company or real estate investment trust" for "real estate investment trust" and in text "section 860(f)" for "section 859(d)" and "section 860" for "section 859".

1977—Subsec. (c)(26). Pub. L. 95-30 added subsec. (c)(26).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (c)(25) by section 362(d)(2) of Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 860 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 50B, 166, 172, 250, 382, 394, 463, 545, 810, 812, 815, 832, 904, 1251 of this title; title 46 section 1177.

§ 382. Special limitations on net operating loss carryover

TAXABLE YEARS BEGINNING AFTER JUNE 30, 1980, AND REORGANIZATIONS PURSUANT TO PLANS OF REORGANIZATION ADOPTED ON OR AFTER JANUARY 1, 1980

Pub. L. 94-455, title VIII, § 806(e), (g)(2), (3), Oct. 4, 1976, 90 Stat. 1599, 1605, 1606, as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098, provided that, for purposes of applying subsec. (a) of this section to taxable years beginning after June 30, 1980, with specified exceptions, and that for purposes of applying subsec. (b) of this section to reorganizations pursuant to plans of reorganization adopted on or after Jan. 1, 1980, this section will read as follows:

[See pages 280 to 283 of main edition for text of section 382]

EFFECTIVE DATE OF 1976 AMENDMENT

Section 806(g)(2), (3) of Pub. L. 94-455 as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098, provided that:

"(2) For purposes of applying sections 382(a) and 383 (as it relates to section 382(a)) of the Internal Revenue Code of 1954, as amended by subsections (e) and (f), the amendments made by subsections (e) and (f) [amending this section and sections 368(c) and 383 of this title] shall take effect for taxable years beginning after June 30, 1980, except that the beginning of the taxable years specified in clause (ii) of section 382(a)(1)(B) of such Code, as so amended, shall be considered to be the later of:

"(A) the beginning of such taxable years, or

"(B) January 1, 1980.

"(3) Sections 382(b) and 383 (as it relates to section 382(b)) of the Internal Revenue Code of 1954, as amended by subsections (e) and (f), shall apply (and such sections as in effect prior to such amendment shall not apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after January 1, 1980. For purposes of the preceding sentence, a corporation shall be considered to have adopted a plan of reorganization on the date on which a resolution of the board of directors is passed adopting the plan or recommending its adoption to the shareholders, or on the date on which the shareholders approve the plan of reorganization, whichever is earlier."

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

Pub. L. 95-600, title III, § 368, Nov. 6, 1978, 92 Stat. 2857, provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), paragraphs (2) and (3) of section 806(g) of the Tax Reform Act of 1976 [set out as the Effective Date of 1976 Amendment note above] (relating to effective dates for the amendments to sections 382 and 383 of the Code) are amended by striking out '1978' each place it appears and inserting in lieu thereof '1980'

"(b) ELECTION OF PRIOR LAW.—

"(1) A taxpayer may elect not to have the amendment made by subsection (a) apply with respect to any acquisition or reorganization occurring before the end of the taxpayer's first taxable year beginning after June 30, 1978, where such acquisition or reorganization occurs pursuant to a written binding contract or option to acquire stock or assets which was entered into before September 27, 1978.

"(2) An election under this subsection shall be filed with a taxpayer's timely filed return for the first taxable year in which a reorganization or acquisition described in paragraph (1) occurs, or, if later, within 90 days after the date of enactment of this Act [Nov. 6, 1978]. Such election shall apply to all acquisitions and reorganizations to which, but for such election, subsection (a) would apply."

§ 383. Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, foreign taxes, and capital losses

If—

(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or

(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B),

then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.

(Added Pub. L. 92-178, title III, § 302(a), Dec. 10, 1971, 85 Stat. 521, and amended Pub. L. 94-455, title X, § 1031(b)(5), title XIX,

§ 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1623, 1834; Pub. L. 95-30, title II, § 202(d)(3)(C), May 23, 1977, 91 Stat. 148.)

TAXABLE YEARS ENDING BEFORE JULY 1, 1980

Section 383, set out above, as it relates to section 382(a) of this title is applicable to taxable years ending before July 1, 1980.

REORGANIZATIONS PURSUANT TO PLANS ADOPTED ON OR AFTER JANUARY 1, 1980

Pub. L. 94-455, title VIII, § 806(g)(3), Oct. 4, 1976, 90 Stat., 1606, as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098, provided that for purposes of applying this section as it relates to section 382(b) of this title, as amended by section 806(e) of Pub. L. 94-455, to reorganizations adopted by one or more of the parties on or after Jan. 1, 1980, this section reads as set out below.

§ 383. Special limitations on unused investment credits, work incentive program credits, new employee credits, foreign taxes, and capital losses

In the case of a change of ownership of a corporation in the manner described in section 382 (a) or (b), the limitations provided in section 382 in such cases with respect to net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c), to any excess foreign taxes of the corporation under section 904(d), and to any net capital loss of the corporation under section 1212.

(Added Pub. L. 92-178, title III, § 302(a), Dec. 10, 1971, 85 Stat. 521, and amended Pub. L. 94-455, title VIII, § 806(f)(2), title X, § 1031(b)(5), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1605, 1623, 1834; Pub. L. 95-30, title II, § 202(d)(3)(C) May 23, 1977, 91 Stat. 148.)

TAXABLE YEARS BEGINNING AFTER JUNE 30, 1980

Pub. L. 94-455, title VIII, § 806(g)(2), Oct. 4, 1976, 90 Stat. 1605, as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098, provided that for the purposes of applying this section as it relates to section 382(a) of this title, as amended by section 806(e) of Pub. L. 94-455, to taxable years beginning after June 30, 1980, this section will read as set out below.

§ 383. Special limitations on unused investment credits, work incentive program credits, new employee credits, foreign taxes, and capital losses

In the case of a change of ownership of a corporation in the manner described in section 382(a) or (b), the limitations provided in section 382 in such cases with respect to net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(c), to any excess foreign taxes of the corporation under section 904(d), and to any net capital loss of the corporation under section 1212.

(Added Pub. L. 92-178, title III, § 302(a), Dec. 10, 1971, 85 Stat. 521, and amended Pub. L. 94-455, title VIII, § 806(f)(2), title X, § 1031(b)(5), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1605, 1623, 1834; Pub. L. 95-30, title II, § 202(d)(3)(B), May 23, 1977, 91 Stat. 148.)

AMENDMENTS

1977—Pub. L. 95-30, § 202(d)(3)(C), in sections 383 set out first and second, inserted "to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(c)" in text and "new employee credits," in catchline.

Pub. L. 95-30, § 202(d)(3)(B), in section 383 set out third, inserted "to any unused new employee credit of the corporation under section 53(c)" in text and "new employee credits," in catchline.

1976—Pub. L. 94-455, § 806(f)(2), in sections 383 set out second and third, substituted provisions that the net operating loss limitations in section 382 shall apply to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(b), to excess foreign taxes under section 904(d) and to net capital losses under section 1212 for provisions that the net operating loss carryover limitations in section 382 shall apply, in the case of ownership changes described in section 382(a)(1) or reorganizations specified in section 381(a)(2) resulting in ownership changes described in section 382(b)(1)(B), to unused investment credits under section 46(b), to unused work incentive program credits under section 50A(B), to excess foreign taxes under section 904(c), and to net capital losses under section 1212.

EFFECTIVE DATE OF 1976 AMENDMENT

* * * * *

For purposes of applying this section (as it relates to section 382(a) of this title) as amended by section 806(e) and (f) of Pub. L. 94-455, the amendments made by section 806(e) and (f) of Pub. L. 94-455 effective for taxable years beginning after June 30, 1980, with specified provisions for determining the beginning of the taxable years specified in section 382(a)(1)(B)(ii) of this title, and this section (as it relates to section 382(b) of this title) as amended by section 806(e) and (f) of Pub. L. 94-455 to apply (and such sections as in effect prior to such amendment not to apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1980, see section 806(g)(2) and (3) of Pub. L. 94-455, as amended, set out as an Effective Date of 1976 Amendment note under section 382 of this title.

DELAY IN EFFECTIVE DATE OF 1976 AMENDMENT

For election by taxpayer for application of prior law with respect to any acquisition or reorganization occurring before the end of the taxpayer's first taxable year beginning after June 30, 1978, see section 368 of Pub. L. 95-600, set out as a Delay in Effective Date of 1976 Amendment note under section 382 of this title.

Subchapter D—Deferred Compensation, Etc.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

SUBPART A—GENERAL RULE

Sec.
409A. Qualification for ESOPs.

AMENDMENTS

1978—Pub. L. 95-600, title I, § 141(f)(8), Nov. 6, 1978, 92 Stat. 2795, added item 409A.

§ 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

[*See main edition for text of (1) to (4)*]

(5) A classification shall not be considered discriminatory within the meaning of paragraph (4) or section 410(b) (without regard to paragraph (1)(A) thereof) merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 3121(a)(1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 3121(a)(1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law. For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c)(1) means such individual's earned income (as defined in subsection (c)(2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees. For purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the amount of contributions on behalf of the employees allowed as a deduction under section 404 for the taxable year with respect to such plans, taken together, bears a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, the plans shall not be considered discriminatory merely because the rights of employees to, or derived from, the employer contributions under the separate plans do not become nonforfeitable at the same rate. For the purposes of determining whether two or more plans of an employer satisfy the requirements of paragraph (4) when considered as a single plan, if the employees' rights to benefits under the separate plans do not become nonforfeitable at the same rate, but the levels of benefits provided by the separate plans satisfy the requirements of regulations prescribed by the Secretary to take account of the differences in such rates, the plans shall not be considered discriminatory merely because of the difference in such rates. For purposes of determining whether one or more plans of an employer satisfy the requirements of paragraph (4) and of section 410(b), an employer may take into account all simplified employee pensions to which only the employer contributes.

[*See main edition for text of (6) to (20)*]

(21) A trust forming part of an ESOP shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1).

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

[*See main edition for text of (b) to (k)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, §§ 141(f)(3), 152(e), 92 Stat. 2795, 2799.)

ADDITION OF SUBSEC. (a)(22)

Sections 143(a) and (b) of Pub. L. 95-600 provided that, with respect to applicability acquisitions of securities after Dec. 31, 1979, subsec. (a)(22) of this section is added to read as follows:

(22) If a defined contributions plan—

(A) is established by an employer whose stock is not publicly traded, and

(B) after acquiring securities of the employer, more than 10 percent of the total assets of the plan as securities of the employer,

any trust forming part of said plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409A.

ADDITION OF SUBSEC. (k) AND REDESIGNATION OF FORMER SUBSEC. (k) AS (l)

Sections 135(a) and (c)(1) of Pub. L. 95-600 provided that, with respect to applicability to plan years beginning after Dec. 31, 1979, subsec. (k) of this section is added and former subsec. (k) of this section is redesignated as (l) to read as follows:

(k) Cash or deferred arrangements

(1) General rule

A profit-sharing or stock bonus plan shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan which meets the requirements of subsection (a)—

(A) under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service, hardship or the attainment of age 59½, and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and

(C) which provides that an employee's right to his accrued benefit derived from employer contributions made to the trust pursuant to his election are nonforfeitable.

(3) Application of participation and discrimination standards

(A) A qualified cash or deferred arrangement shall be considered to satisfy the requirements of subsection (a)(4), with respect to the amount of contributions, and of subparagraph (B) of section 410(b)(1) for a plan year if those employees eligible to benefit under the plan satisfy the provisions of subparagraph (A) or (B) of section 410(b)(1) and if the actual deferral percentage for highly compensated employees (as defined in paragraph (4)) for such plan year bears a relationship to the actual deferral percentage for all other eligible employees for such plan year which meets either of the following tests:

(i) The actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.5.

(ii) The excess of the actual deferral percentage for the group of highly compensated employees over that of all other eligible employees is not more than 3 percentage points, and the actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.5.

(B) For purposes of subparagraph (A), the actual deferral percentage for a specified group of employees for a plan year shall be the average of the ratios (calculated separately for each employee in such group) of—

(i) the amount of employer contributions actually paid over to the trust on behalf of each such employee for such plan year, to

(ii) the employee's compensation for such plan year.

For purposes of the preceding sentence, the compensation of any employee for a plan year shall be the amount of his compensation which is taken into account under the plan in calculating the contribution which may be made on his behalf for such plan year.

(4) Highly compensated employee

For purposes of this subsection, the term "highly compensated employee" means any employee who is more highly compensated than two-thirds of all eligible employees, taking into account only compensation which is considered in applying paragraph (3).

(l) Cross reference

For exemption from tax of a trust qualified under this section, see section 501(a).

AMENDMENTS

1978—Subsec. (a)(5). Pub. L. 95-600, § 152(e), added provision that for purposes of determining whether one or more plans of the employer satisfy the requirments of section 410(b)(4), an employer may take into account all simplified employee pensions to which only the employer contributes.

Subsec. (a)(21). Pub. L. 95-600, § 141(f)(3), substituted "ESOP" for "employee stock option plan which satisfies the requirements of section 301(d) of the Tax Reduction Act of 1975" and "section 48(n)(1)" for "subsection (d)(6) or (e)(3) of section 301 of the Tax Reduction Act of 1975".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(5) of this section by section 152(e) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 408 of this title.

Section 143(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [adding subsec. (a)(22) of this section] shall apply to acquisitions of securities after December 31, 1979."

Section 135(c)(1) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (k) and (l) of this section and section 402(a)(8) of this title] shall apply to plan years beginning after December 31, 1979."

TRANSITIONAL RULE

Section 135(c)(2) of Pub. L. 95-600 provided that:

"In the case of cash or deferred arrangements in existence on June 27, 1974—

"(A) the qualification of the plan and the trust under section 401 of the Internal Revenue Code of 1954;

"(B) the exemption of the trust under section 501(a) of such Code;

"(C) the taxable year of inclusion in gross income of the employee of any amount so contributed by the employer to the trust; and

"(D) the excludability of the interest of the employee in the trust under sections 2039 and 2517 of such Code,

shall be determined for plan years beginning before January 1, 1980 in a manner consistent with Revenue Ruling 56-497 (1956-2 C.B. 284), Revenue Ruling 63-180 (1963-2 C.B. 189), and Revenue Ruling 68-89 (1968-1 C.B. 402)."

SALARY REDUCTION REGULATIONS

Section 2006 of Pub. L. 93-406, as amended by Pub. L. 94-455, title XV, § 1506, Oct. 4, 1976, 90 Stat. 1520;

Pub. L. 95-615, § 5, Nov. 8, 1978, 92 Stat. 3097, provided that:

"(a) Inclusion of certain contributions in income—Except in the case of plans or arrangements in existence on June 27, 1974, a contribution made before January 1, 1980, to an employees' trust described in section 401(a), 403(a) or 405(a) of the Internal Revenue Code of 1954 which is exempt from tax under section 501(a) of such Code, or under an arrangement which, but for the fact that it was not in existence on June 27, 1974, would be an arrangement described in subsection (b)(2) of this section, shall be treated as a contribution made by an employee if the contribution is made under an arrangement under which the contribution will be made only if the employee elects to receive a reduction in his compensation or to forego an increase in his compensation.

"(b) Administration in the case of certain qualified pension or profit-sharing plans, etc., in existence on June 27, 1974—No salary reduction regulations may be issued by the Secretary of the Treasury in final form before January 1, 1980, with respect to an arrangement which was in existence on June 27, 1974, and which, on that date—

* * * * *

"(d) Limitation on retroactivity of final regulations—In the case of any salary reduction regulations which become final after December 31, 1979—

"(1) for purposes of chapter 1 of the Internal Revenue Code of 1954 (relating to normal taxes and surtaxes), such regulations shall not apply before January 1, 1980; and

* * * * *

Pub. L. 95-615, § 210(b), Nov. 8, 1978, 92 Stat. 3109, provided that: "Section 5 of this Act [amending this note] shall not apply with respect to any type of plan for any period for which rules for that type of plan are provided by the Revenue Act of 1978 [see Short Title note set out under section 1 of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 48, 62, 72, 83, 101, 104, 105, 120, 124, 127, 172, 219, 220, 318, 382, 402 to 415, 447, 457, 501, 503, 511, 513, 542, 805, 871, 1348, 1379, 1492, 1563, 2039, 2517, 3121, 3306, 3401, 4941, 4972, 4975, 6033, 6043, 6047, 6058, 6072, 6104, 6324, 7476 of this title; title 11 App. section 522; title 12 sections 1464, 1728, 1787, 1821; title 15 sections 77c, 78c, 78*l*, 80a-3; title 29 sections 1053, 1082, 1103, 1107, 1108, 1132, 1301, 1321, 1322, 1344; title 31 section 1524; title 42 section 409; title 45 sections 702, 726.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

[*See main edition for text of (1)*]

(2) Capital gains treatment for certain distributions

In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

(A) the numerator of which is the number of calendar years of active participation by the employee in such plan before January 1, 1974, and

(B) the denominator of which is the number of calendar years of active participation by the employee in such plan,

shall be treated as a gain from the sale or exchange of a capital asset held for more than 1 year. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

[*See main edition for text of (3) and (4)*]

(5) Rollover amounts

(A) General rule

If—

(i) the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution,

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Maximum amount which may be rolled over

In the case of any qualifying rollover distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions.

(C) Transfer must be made within 60 days of receipt

Subparagraph (A) shall not apply to any transfer of a distribution made after the 60th day following the day on which the employee received the property distributed.

(D) Definitions

For purposes of this paragraph—

(i) Qualifying rollover distribution

The term "qualifying rollover distribution" means 1 or more distributions—

(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan, or

(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subparagraphs (B) and (H) of subsection (e)(4)).

(ii) Employee contributions

The term "employee contributions" means—

(I) the excess of the amounts considered contributed by the employee (de-

termined by applying section 72(f)), over

(II) any amounts theretofore distributed to the employee which were not includible in gross income.

(iii) Qualified trust

The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(iv) Eligible retirement plan

The term "eligible retirement plan" means—

(I) an individual retirement account described in section 408(a),

(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(III) a retirement bond described in section 409,

(IV) a qualified trust, and

(V) an annuity plan described in section 403(a).

(E) Special rules

(i) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer described in subparagraph (A) to an eligible retirement plan described in subclause (I), (II), or (III) of subparagraph (D)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

(ii) Self-employed individuals and owner-employees

An eligible retirement plan described in subclause (IV) or (V) of subparagraph (D)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan.

(6) Special rollover rules

(A) Time of termination

For purposes of paragraph (5)(D)(i), a complete discontinuance of contributions under a profit-sharing or stock bonus plan shall be deemed to occur on the day the plan administrator notifies the Secretary (in accordance with regulations prescribed by the Secretary) that all contributions to the plan have been completely discontinued. For purposes of section 411(d)(3), the plan shall be considered to be terminated no later than the day such notice is filed with the Secretary.

(B) Sale of subsidiary or assets

For purposes of paragraph (5)(D)(i)—

[*See main edition for text of* (i), (ii), *and closing provisions*]

(C) Treatment of portion not rolled over

If any portion of a lump sum distribution is transferred in a transfer to which paragraph (5)(A) applies, paragraph (2) of subsection (a), and paragraphs (1) and (3) of subsection (e) shall not apply with respect to such lump sum distribution.

(D) Sales of distributed property

For purposes of subparagraphs (5) and (7)—

(i) Transfer of proceeds from sale of distributed property treated as transfer of distributed property

The transfer of an amount equal to any portion of the proceeds from the sale of property received in the distribution shall be treated as the transfer of property received in the distribution.

(ii) Proceeds attributable to increase in value

The excess of fair market value of property on sale over its fair market value on distribution shall be treated as property received in the distribution.

(iii) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money, the taxpayer many[1] designate—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions, and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution.

Any designation under this clause for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(iv) Treatment where no designation

In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under clause (iii) within the time provided therein, then—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions, and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution

shall be determined on a ratable basis.

(v) Nonrecognition of gain or loss

In the case of any sale described in clause (i), to the extent that an amount equal to the proceeds is transferred pursuant to paragraph (5)(B) or (7)(B) (as the case by[1] be), neither gain nor loss on such sale shall be recognized.

(7) Rollover where spouse receives lump-sum distribution at death of employee

(A) General rule

If—

(i) any portion of a lump-sum distribution from a qualified trust is paid to the

[1] So in original. Probably should be "may".

spouse of the employee on account of the employee's death,

(ii) the spouse transfers any portion of the property which the spouse receives in such distribution to an individual retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

Rules similar to the rules of subparagraphs (B) through (E) of paragraph (5) and of paragraph (6) shall apply for purposes of this paragraph.

[See main edition for text of (b) to (d)]

(e) Tax on lump sum distributions

(1) Imposition of separate tax on lump sum distributions

[See main edition for text of (A) and (B)]

(C) Initial separate tax

The initial separate tax for any taxable year is an amount equal to 10 times the tax which would be imposed by subsection (c) of section 1 if the recipient were an individual referred to in such subsection and the taxable income were an amount equal to $2,300 plus one-tenth of the excess of—

(i) the total taxable amount of the lump sum distribution for the taxable year, over

(ii) the minimum distribution allowance.

[See main edition for text of (D) and (E), (2) and (3)]

(4) Definitions and special rules

[See main edition for text of (A) to (K)]

(L) Election to treat pre-1974 participation as post-1973 participation

For purposes of subparagraph (E), subsection (a)(2), and section 403(a)(2), if a taxpayer elects (at the time and in the manner provided under regulations prescribed by the Secretary), all calendar years of an employee's active participation in all plans in which the employee has been an active participant shall be considered years of active participation by such employee after December 31, 1973. An election made under this subparagraph, once made, shall be irrevocable and shall apply to all lump-sum distributions received by the taxpayer with respect to the employee. This subparagraph shall not apply if the taxpayer received a lump-sum distribution in a previous taxable year of the employee beginning after December 31, 1975, unless no portion of such lump-sum distribution was treated under subsection (a)(2) or section 403(a)(2) as gain from the sale or exchange of a capital asset held for more than 1 year.

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732; May 23, 1977, Pub. L. 95-30, title I, § 102(b)(4), 91 Stat. 137; Oct. 14, 1978, Pub. L. 95-458, § 4(a), (c), 92 Stat. 1257, 1259; Nov. 6, 1978, Pub. L. 95-600, title I, §§ 101(d)(1), 157(f)(1), (g)(1), (h)(1), 92 Stat. 2770, 2806-2808.)

ADDITION OF SUBSEC. (a)(8)

Section 135(b) and (c)(1) of Pub. L. 95-600 provided that, with applicability to plan years beginning after Dec. 31, 1979, subsec. (a)(8) of this section is added to read as follows:

(8) Cash or deferred arrangements

For purposes of this title, contributions made by an employer on behalf of an employee to a trust which is a part of a qualified cash or deferred arrangement (as defined in section 401(k)(2)) shall not be treated as distributed or made available to the employee nor as contributions made to the trust by the employee merely because the arrangement includes provisions under which the employee has an election whether the contribution will be made to the trust or received by the employee in cash.

AMENDMENTS

1978—Subsec. (a)(5). Pub. L. 95-458, § 4(a), among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5)(D)(i)(II). Pub. L. 95-600, § 157(h)(1), substituted "subparagraphs (B) and (H) of subsection (e)(4)" for "subsection (e)(4)(B)".

Subsec. (a)(6). Pub. L. 95-458, § 4(c), in provision preceding subpar. (A) struck out "For purposes of paragraph (5)(A)(i)", in subpar. (A) substituted "For purposes of paragraph (5)(D)(i), a complete" for "A complete", in subpar. (B) inserted "For purposes of paragraph (5)(D)(i)—" following "assets.—" in provision preceding cl. (i), and added subpar. (C).

Subsec. (a)(6)(D). Pub. L. 95-600, § 157(f)(1), added subsec. (a)(6)(D).

Subsec. (a)(7). Pub. L. 95-600, § 157(g)(1), added subsec. (a)(7).

Subsec. (e)(1)(C). Pub. L. 95-600, § 101(d)(1), substituted "$2,300" for "$2,200".

1977—Subsec. (e)(1)(C). Pub. L. 95-30 substituted "amount equal to $2,200 plus one-tenth of the excess of" for "amount equal to one-tenth of the excess of" in the provisions preceding cl. (i).

1976—Subsec. (a)(2). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

Subsec. (e)(4)(L). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 157(h)(3)(A) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (a)(5)(D)(i)(II), (6)(D), (7), of this section and sections 219(c)(3), (5), 220(c)(4), (6), 403(a)(4)(B), 408(b)(2), (b)(2)(B), (d)(3)(B), (5), (6), 409(a)(4), 4973(b), (b)(2), 4974(c), 6058(c) to (f) and 7701(a)(37) of this title] shall apply to payments made in taxable years beginning after December 31, 1977."

Section 157(f)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [adding subsec. (a)(6)(D) of this section] shall apply to qualifying rollover distributions (as defined in section 402(a)(5)(D)(i) of the Internal Revenue Code of 1954) completed after December 31, 1978, in taxable years ending after such date."

Section 157(g)(4) of Pub. L. 95-600 provided that: "The amendments made by this subsection [adding

subsec. (a)(7) of this section and amending section 403(a)(4)(B) and 408(d)(3)(B) of this title] shall apply to lump-sum distributions completed after December 31, 1978, in taxable years ending after such date."

Amendment to subsec. (e)(1)(C) by section 101(d) of Pub. L. 95-600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; CERTAIN ROLLOVERS VALIDATED

Section 4(d) of Pub. L. 95-458 provided that:

"(1) IN GENERAL.—The amendments made by subsections (a), (b), and (c) [amending sections 402 and 403 of this title] shall apply with respect to taxable years beginning after December 31, 1974.

"(2) VALIDATION OF CERTAIN ATTEMPTED ROLLOVERS.—If the taxpayer—

"(A) attempted to comply with the requirements of section 402(a)(5) or 403(a)(4) of the Internal Revenue Code of 1954 for a taxable year beginning before the date of the enactment of this Act, [Oct. 14, 1978], and

"(B) failed to meet the requirements of such section that all property received in the distribution be transferred,

such section (as amended by this section) shall be applied by treating any transfer of property made on or before December 31, 1978, as if it were made on or before the 60th day after the day on which the taxpayer received such property. For purposes of the preceding sentence, a transfer of money shall be treated as a transfer of property received in a distribution to the extent that the amount of the money transferred does not exceed the highest fair market value of the property distributed during the 60-day period beginning on the date on which the taxpayer received such property."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsecs. (a)(2) and (e)(4)(L) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES

Section 157(h)(3)(B) of Pub. L. 95-600 provided that: "In the case of any payment which is described in section 402(a)(5)(A) or 403(a)(4)(A) of the Internal Revenue Code of 1954 by reason of the amendments made by this section, the applicable period specified in section 402(a)(5)(C) of such Code (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B) of such Code) shall not expire before the close of December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 46, 50A, 53, 55, 56, 62, 101, 219, 220, 401, 403, 405, 406, 407, 408, 409, 415, 457, 871, 901, 911, 1348, 1379, 1441, 2039, 4973 of this title.

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

[See main edition for text of (1)]

(2) Capital gains treatment for certain distributions

(A) General rule

If—

(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the contracts under the plan; and

(iii) a lump sum distribution (as defined in section 402(e)(4)(A)) is paid to the recipient,

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 1 year. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

[See main edition for text of (B) and (3)]

(4) Rollover amounts

(A) General rule

If—

(i) the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution.

(ii) the employee transfers any portion of the property he receives in such distribution to an eligible retirement plan, and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

Rules similar to the rules of subparagraphs (B) through (E) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

[(5) Repealed]

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

[*See main edition for text of (A) to (C)*]

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(iii) or 409(d)(3)(C) shall not be considered contributed by such employer.

[*See main edition for text of (2) to (6)*]

(7) Custodial accounts for regulated investment company stock

(A) Amounts paid treated as contributions

For purposes of this title, amounts paid by an employer described in paragraph (1)(A) to a custodial account which satisfied the requirements of section 401(f)(2) shall be treated as amounts contributed by him for an annuity contract for his employee if—

(i) the amounts are to be invested in regulated investment company stock to be held in that custodial account, and

(ii) under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59½, separates from service, becomes disabled (within the meaning of section 72(m)(7)), or encounters financial hardship.

[*See main edition for text of (B) and (C)*]

(8) Rollover amounts

(A) General rule

If—

(i) the balance to the credit of an employee is paid to him in a qualifying distribution,

(ii) the employee transfers any portion of the property he receives in such distribution to an individual retirement plan or to an annuity contract described in paragraph (1), and

(iii) in the case of a distribution of property other than money, the property so transferred consists of the property distributed,

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Qualifying distribution defined

(i) In general

For purposes of subparagraph (A), the term "qualifying distribution" means 1 or more distributions from an annuity contract described in paragraph (1) which would constitute a lump sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a).

(ii) Aggregation of annuity contracts

For purposes of this paragraph, all annuity contracts described in paragraph (1) purchased by an employer shall be treated as a single contract, and section 402(e)(4)(C) shall not apply.

(C) Certain rules made applicable

Rules similar to the rules of subparagraphs (B), (C), and (E)(i) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

[*See main edition for text of (c)*]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732; Oct. 14, 1978, Pub. L. 95-458, § 4(b), 92 Stat. 1259; Nov. 6, 1978, Pub. L. 95-600, title I, §§ 154(a), 156(a), (b), 157(g)(2), 92 Stat. 2801, 2802, 2808.)

AMENDMENTS

1978—Subsec. (a)(4). Pub. L. 95-600, § 157(g)(2), in subpar. (B) substituted "paragraphs (6) and (7)" for "paragraph (6)".

Pub. L. 95-458, among other changes, substituted provision permitting tax free treatment for any portion of a lump sum distribution from a qualified retirement plan which is deposited in an individual retirement account or another qualifying plan for provision which required transfer of all such property received.

Subsec. (a)(5). Pub. L. 95-458 struck out subsec. (a)(5) which related to special rules concerning time of termination of a profit-sharing plan and the treatment of the sale of a corporate subsidiary or assets as payment or distribution on account of termination of a plan of which an annuity trust was a part.

Subsec. (b)(1). Pub. L. 95-600, § 156(b), added provision relating to application of rules of this subsection to amounts contributed by an employer for a taxable year.

Subsec. (b)(7)(A). Pub. L. 95-600, § 154(a), struck out "the amounts are paid to provide a retirement benefit for that employee and are to be invested in regulated investment company stock to be held in that custodial account" following "contract for his employee if", and added cls. (i) and (ii).

Subsec. (b)(8). Pub. L. 95-600, § 156(a), added subsec. (b)(8).

1976—Subsec. (a)(2)(A). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment to subsec. (a)(4) and (5) by Pub. L. 95-458 applicable with respect to taxable years beginning after Dec. 31, 1974, see section 4(d) of Pub. L. 95-458 set out as an Effective Date of 1978 Amendment note under section 402 of this title.

Amendment of subsec. (a)(4)(B) of this section by section 157(g)(2) of Pub. L. 95-600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 402 of this title.

Amendment of subsec. (a)(4)(B) of this section by section 157(g)(2) of Pub. L. 95-600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95-600, set out

as an Effective Date of 1978 Amendment note under section 402 of this title.

Section 156(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (b)(1), (8) of this section and sections 219(b)(4), 220(b)(5), 408(a)(1), (d)(3)(A), 409(a)(4), (b)(3)(C), 2039(e) and 4973(b)(1)(A), (c)(1)] s..all apply to distributions or transfers made after December 31, 1978, in taxable years beginning after such date."

Section 154(b) of Pub. L. 95-600 provided that: "The amendment made by this section [amending subsec. (b)(7)(A) of this section] shall apply to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (a)(2)(A) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

TRANSITIONAL RULE IN CASE OF ROLLOVER CONTRIBUTIONS TO EMPLOYEE TRUSTS OR ANNUITIES.

Applicable period specified in section 402(a)(5)(C) of this title shall not expire before close of Dec. 31, 1978 in case of any payment described in subsec. (a)(4)(A) of this section or section 402(a)(5)(A) of this title, see section 157(h)(3)(B) of Pub. L. 95-600, set out as a note under section 402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 72, 101, 104, 219, 220, 402, 404, 406 to 409, 412, 414, 415, 457, 805, 871, 911, 1348, 1379, 1441, 2039, 2517, 3121, 3306, 3401, 4972, 4973, 4975, 6047, 6104, 7476 of this title; title 11 App. section 522; title 29 sections 1103, 1132, 1344; title 42 section 409.

§ 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

[See main edition for text of (1)]

(2) Employees' annuities

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), and (22) and, if applicable, the requirements of section 401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1)), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

[See main edition for text of (3) to (9)]

(b) Method of contributions, etc., having the effect of a plan

If there is no plan but a method of employer contributions or compensation has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation, subsection (a) shall apply as if there were such a plan.

[See main edition for text of (c)]

(d) Deductibility of payments of deferred compensation, etc., to independent contractors

If a plan would be described in so much of subsection (a) as precedes paragraph (1) thereof (as modified by subsection (b)) but for the fact that there is no employer-employee relationship, the contributions or compensation—

(1) shall not be deductible by the payor thereof under section 162 or 212, but

(2) shall (if they would be deductible under section 162 or 212 but for paragraph (1)) be deductible under this subsection for the taxable year in which an amount attributable to the contribution or compensation is includible in the gross income of the persons participating in the plan.

[See main edition for text of (e) to (g)]

(h) Special rules for simplified employee pensions

(1) In general

Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of this section. Employer contributions to a simplified employee pension are subject to the following limitations:

(A) Contributions made for a calendar year are deductible for the taxable year with which or within which the calendar year ends.

(B) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.

(C) The amount deductible in a taxable year for a simplified employee pension shall not exceed 15 percent of the compensation paid to the employees during the calendar year ending with or within the taxable year. The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time, subject to the 15 percent limit of the preceding sentence.

(2) Effect on stock bonus and profit-sharing trust

For any taxable year for which the employer has a deduction under subparagraph (1), the otherwise applicable limitations in subsection (a)(3)(A) shall be reduced by the amount of the allowable deductions under subparagraph (1) with respect to participants in the stock bonus or profit-sharing trust.

(3) Effect on limit on deductions

For any taxable year for which the employer has a deduction under subparagraph (1), the otherwise applicable 25 percent limitations in subsection (a)(7) shall be reduced by the amount of the allowable deductions under subparagraph (1) with respect to participants in the stock bonus or profit-sharing trust.

(4) Effect on self-employed individuals

The limitations described in paragraphs (1), (2)(A), and (4) of subsection (e) for any taxable year shall be reduced by the amount of the allowable deductions under subparagraph

(1) with respect to an employee within the meaning of section 401(c)(1).

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, §§ 133(a), (b), 141(f)(9), 152(f), 92 Stat. 2783, 2795, 2799.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-600, § 141(f)(9), substituted "(20), and (22)" for "and (20)".

Subsec. (b). Pub. L. 95-600, § 133(b), substituted "other plan" for "similar plan".

Subsec. (d). Pub. L. 95-600, § 133(a), added subsec. (d).

Subsec. (h). Pub. L. 95-600, § 152(f), added subsec. (h).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2) of this section by section 141(f)(9) of Pub. L. 95-600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409A of this title.

Section 133(c) of Pub. L. 95-600 provided that: "The amendments made by this section [adding subsec. (d) and amending subsec. (b) of this section] shall apply to deductions for taxable years beginning after December 31, 1978."

Amendment of subsec. (h) of this section by section 152(f) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95-600, set out as a note under section 408 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 62, 72, 83, 104, 172, 381, 401 to 403, 405, 406, 407, 413, 414, 542, 556, 679, 1379, 2517, 4941 of this title; title 15 sections 78c, 78*l*, 80a-3; title 19 section 2373; title 29 sections 1103, 1321, 1322.

§ 405. Qualified bond purchase plans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 62, 172, 219, 220, 406, 407, 412, 414, 415, 457, 1379, 3121, 3306, 3401, 4972, 4975, 6047, 6104, 7476 of this title; title 29 sections 1103, 1132; title 42 section 409.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(a)(5), 403(a)(4), 403(b)(8), or 409(b)(3)(C), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of $1,500 on behalf of any individual.

[*See main edition for text of (2) to (7)*]

(b) Individual retirement annuity

For purposes of this section, the term "individual retirement annuity" means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

[*See main edition for text of (1)*]

(2) Under the contract—

(A) the premiums are not fixed,

(B) the annual premium on behalf of any individual will not exceed $1,500, and

(C) any refund of premiums will be applied before the close of the calendar year following the year of the refund toward the payment of future premiums or the purchase of additional benefits.

[*See main edition for text of (3) to (5), closing par.; (c)*]

(d) Tax treatment of distributions

[*See main edition for text of (1) and (2)*]

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) or retirement bond for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution;

(ii) the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an employees' trust described in section 401(a) which is exempt from tax under section 501(a) (other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan), or an annuity plan described in section 403(a) (other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or

(iii)(I) the entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

(II) no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover

contribution from an annuity contract described in section 403(b) and any earnings on such rollover, and

(III) the entire amount thereof is paid into another annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after he receives the payment or distribution.

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account, individual retirement annuity, or a retirement bond which was not includible in his gross income because of the application of this paragraph. Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).

[*See main edition for text of (4)*]

(5) Certain distributions of excess contributions after due date for taxable year

(A) In general

In the case of any individual, if the aggregate contributions (other than rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed $1,750, paragraph (1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 or 220 for the taxable year for which the contribution was paid—

(i) if such distribution is received after the date described in paragraph (4),

(ii) but only to the extent that no deduction has been allowed under section 219 or 220 with respect to such excess contribution.

(B) Excess rollover contributions attributable to erroneous information

If—

(i) the taxpayer reasonably relies on information supplied pursuant to subtitle F for determining the amount of a rollover contribution, but

(ii) such information was erroneous,

subparagraph (A) shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account, individual retirement annuity, or retirement bond to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account, annuity, or bond for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

[*See main edition for text of (e) to (i)*]

(j) Increase in maximum limitations for simplified employee pensions

In the case of a simplified employee pension, this section shall be applied by substituting "$7,500" for "$1,500" in the following provisions:

(1) paragraph (1) of subsection (a),

(2) paragraph (2) of subsection (b), and

(3) paragraph (5) of subsection (b).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met.

(2) Participation requirements

This paragraph is satisfied with respect to a simplified employee pension for a calendar year only if for such year the employer contributes to the simplified employee pension of each employee who—

(A) has attained age 25, and

(B) has performed service for the employer during at least 3 of the immediately preceding 5 calendar years.

(3) Contributions may not discriminate in favor of the highly compensated, etc.

(A) In general

The requirements of this paragraph are met with respect to a simplified employee pension for a calendar year if for such year the contributions made by the employer to simplified employee pensions for his employees do not discriminate in favor of any employee who is—

(i) an officer,

(ii) a shareholder,

(iii) a self-employed individual, or

(iv) highly compensated.

(B) Special rules

For purposes of subparagraph (A)—

(i) there shall be excluded from consideration employees described in subparagraph (A) or (C) of section 410(b)(2), and

(ii) an individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.

(C) Contributions must bear a uniform relationship to total compensation

For purposes of subparagraph (A), employer contributions to simplified employee

pensions shall be considered discriminatory unless contributions thereto bear a uniform relationship to the total compensation (not in excess of the first $100,000) of each employee maintaining a simplified employee pension.

(D) Treatment of certain contributions and taxes

Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the Social Security Act, or any other Federal or State law. Taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of this paragraph, be taken into account as a contribution by the employer to an employee's simplified employee pension. If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees.

(4) Withdrawals must be permitted

A simplified employee pension meets the requirements of this paragraph only if—

(A) employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(B) there is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

(5) Contributions must be made under written allocation formula

The requirements of this paragraph are met with respect to a simplified employee pension only if employer contributions to such pension are determined under a definite written allocation formula which specifies—

(A) the requirements which an employee must satisfy to share in an allocation, and

(B) the manner in which the amount allocated is computed.

(6) Definitions

For purposes of this subsection and subsection (*l*)—

(A) Employee, employer, or owner-employee

The terms "employee", "employer", and "owner-employee" shall have the respective meanings given such terms by section 401(c).

(B) Compensation

The term "compensation" means, in the case of an employee within the meaning of section 401(c)(1), earned income within the meaning of section 401(c)(2).

(*l*) Simplified employer reports

An employer who makes a contribution on behalf of an employee to a simplified employee pension shall provide such simplified reports with respect to such contributions as the Secretary may require by regulations. The reports required by this subsection shall be filed at such time and in such manner, and information with respect to such contributions shall be furnished to the employee at such time and in such manner, as may be required by regulations.

(m) Cross references

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4973.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.

(As amended Pub. L. 95-600, title I, §§ 152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VIII, § 703(c)(4), Nov. 6, 1978, 2797, 2802, 2803, 2805, 2806, 2808, 2939.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (k)(3)(D), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

CODIFICATION

Pub. L. 95-600, title VII, § 703(c)(4), Nov. 6, 1978, 92 Stat. 2939, amended the directory language of section 1501(b)(5) of Pub. L. 94-455, which is cited in the credit of this section.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 156(c)(3), added "403(b)(8)" following "403(a)(4)".

Subsec. (b)(2). Pub. L. 95-600, § 157(d)(1), (e)(1)(A), designated existing provisions as subpars. (B) and (C) and added subpar. (A), and in subpar. (B) as so designated, added "on behalf of any individual" following "annual premium", respectively.

Subsec. (d)(3)(A). Pub. L. 95-600, § 156(c)(1), added cl. (iii).

Subsec. (d)(3)(B). Pub. L. 95-600, § 157(g)(3), (h)(2), added provision relating to the applicability of clause (ii) of subparagraph (A) to any amount paid or distributed out of an individual retirement account or annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) and substituted "1-year period" for "3-year period".

Subsec. (d)(5). Pub. L. 95-600, § 157(c)(1), added subsec. (d)(5). Former subsec. (d)(5) redesignated (d)(6).

Subsec. (d)(6). Pub. L. 95-600, § 157(c)(1), redesignated former subsec. (d)(5) as (d)(6).

Subsec. (j). Pub. L. 95-600, § 152(a), added subsec. (j) and redesignated former subsec. (j) as (m).

Subsecs. (k), (*l*). Pub. L. 95-600, § 152(b), added subsecs. (k) and (*l*).

Subsec. (m). Pub. L. 95-600, § 152(a), redesignated former subsec. (j) as (m).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a)(1), (d)(3)(A) of this section by section 156(c)(1), (3) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1978, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 403 of this title.

Section 157(d)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending

subsec. (b)(2) of this section] shall apply to contracts issued after the date of the enactment of this Act [Nov. 6, 1978]."

Amendment of subsecs. (b)(2), (b)(2)(B), (d)(3)(B), (5), (6), by section 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2) of Pub. L. 95-600 applicable to payments made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 402 of this title.

Section 157(e)(2) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending subsec. (b)(2)(B) of this section and section 409(a)(4) of this title] shall apply to taxable years beginning after December 31, 1976."

Amendment of subsec. (d)(3)(B) of this section by section 157(g)(3) of Pub. L. 95-600 applicable to lump-sum distributions completed after Dec. 31, 1978, in taxable years ending after such date, see section 157(g)(4) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 402 of this title.

Section 157(c)(2)(A) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [redesignating former subsec. (d)(5) as (d)(6) and adding subsec. (d)(5)] shall apply to distributions in taxable years beginning after December 31, 1975."

Section 152(h) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (j) to (m) of this section and sections 219(b)(7), 401(a)(5), 404(h), 414(b), (c), 415(a)(2)(E), (G), (b)(2), (c)(5), (k)(1)(F), (G), (H)] shall apply to taxable years beginning after December 31, 1978."

TRANSITIONAL RULE FOR CONTRIBUTIONS FOR TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1978

Section 157(c)(2)(B) of Pub. L. 95-600 provided that: "In the case of contributions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1954 shall be applied as if such paragraph did not contain any dollar limitation."

EXCHANGE OF FIXED PREMIUM ANNUITY OR ENDOWMENT CONTRACT ISSUED ON OR BEFORE NOV. 6, 1978, FOR INDIVIDUAL RETIREMENT ANNUITY

Section 157(d)(3) of Pub. L. 95-600 provided that: "In the case of any annuity or endowment contract issued on or before the date of the enactment of this Act [Nov. 6, 1978] which would be an individual retirement annuity within the meaning of section 408(b) of the Internal Revenue Code of 1954 [section 408(b) of this title] (as amended by paragraph (1) [amending subsec. (b)(2) of this section]) but for the fact that the premiums under the contract are fixed, at the election of the taxpayer an exchange before January 1, 1981, of that contract for an individual retirement annuity within the meaning of such section 408(b) (as amended by paragraph (1)) shall be treated as a nontaxable exchange which does not constitute a distribution."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 46, 50A, 53, 55, 56, 72, 219, 220, 402, 403, 409, 414, 415, 805, 901, 2039, 2503, 2517, 4973, 4974, 4975, 6047, 6058, 6104, 6693, 7701 of this title; title 11 App. section 522; title 12 sections 1464, 1728, 1787, 1821; title 29 sections 1051, 1081, 1103, 1107, 1108.

§ 409. Retirement bonds

(a) Retirement bond

For purposes of this section and section 219(a), the term "retirement bond" means a bond issued under the Second Liberty Bond Act, as amended, which by its terms, or by regulations prescribed by the Secretary under such Act—

[See main edition for text of (1) to (3)]

(4) provides that, except in the case of a rollover contribution described in subsection (b)(3)(C) or in section 402(a)(5), 403(a)(4), 403(b)(8), or 408(d)(3) the registered owner may not contribute on behalf of any individual for the purchase of such bonds in excess of $1,500 for any taxable year; and

[See main edition for text of (5)]

(b) Income tax treatment of bonds

[See main edition for text of (1) and (2)]

(3) Exceptions

[See main edition for text of (A) and (B)]

(C) Rollover into an individual retirement account or annuity or a qualified plan

If a retirement bond is redeemed at any time before the close of the taxable year in which the registered owner attains age 70½, and the registered owner transfers the entire amount of the proceeds from the redemption of the bond to an individual retirement account described in section 408(a) or to an individual retirement annuity described in section 408(b) (other than an endowment contract) which is maintained for the benefit of the registered owner of the bond, or to an employees' trust described in section 401(a) which is exempt from tax under section 501(a), an annuity plan described in section 403(a), or an annuity contract described in section 403(b) for the benefit of the registered owner, on or before the 60th day after the day on which he received the proceeds of such redemption, then the proceeds shall be excluded from gross income and the transfer shall be treated as a rollover contribution described in section 408(d)(3). This subparagraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan). This subparagraph does not apply in the case of a transfer to an annuity contract described in section 403(b) unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an annuity contract.

[See main edition for text of (c)]

(As amended Pub. L. 95-600, title I, §§ 156(c)(2), (3), 157(e)(1)(B), Nov. 6, 1978, 92 Stat. 2803, 2806.)

AMENDMENTS

1978—Subsec. (a)(4). Pub. L. 95-600, §§ 156(c)(3), 157(e)(1)(B), added "403(b)(8)" following "403(a)(4)", and reference to contribution on behalf of any individual.

Subsec. (b)(3)(C). Pub. L. 95-600, § 156(c)(2), substituted "an annuity plan described in section 403(a), or an annuity contract described in section 403(b)" for "or an annuity plan described in section 403(a)", and added provision relating to the application of this subparagraph in the case of a transfer to an annuity contract described in section 403(b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a)(4), (b)(3)(C) of this section by section 156(c)(2), (3) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1978, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 403 of this title.

Amendment of subsec. (a)(4) of this section by section 157(e)(1)(B) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1976, see section 157(e)(2) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 408 of this title.

Amendment of subsec. (a)(4) of this section by section 157(e)(1)(B) of Pub. L. 95-600 applicable to contributions made in taxable years beginning after Dec. 31, 1977, see section 157(h)(3)(A) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 219, 220, 402, 403, 408, 415, 2039, 2503, 2517, 4973, 4975, 6058, 7701 of this title; title 11 App. section 522; title 29 sections 1051, 1081, 1108.

§ 409A. Qualifications for ESOPS

(a) ESOP defined

Except as otherwise provided in this title, for purposes of this title, the term "ESOP" means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), and (h) of this section.

(b) Required allocation of employer securities

(1) In general

A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 48(n)(1)(A)) to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded

For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation

For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases

Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic ESOP credit may be extended over whatever period may be necessary to comply with the requirements of section 415.

(c) Participants must have nonforfeitable rights

A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.

(d) Employer securities must stay in the plan

A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participants's account under subsection (b) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of separation from service, death, or disability.

(e) Voting rights

(1) In general

A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

(2) Requirements where employer has a registration-type class of securities

If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant in the plan is entitled to direct the plan as to the manner in which employer securities which are entitled to vote and are allocated to the account of such participant are to be voted.

(3) Requirement for other employers

If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant in the plan is entitled to direct the plan as to the manner in which voting rights under employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted.

(4) Registration-type class of securities defined

For purposes of this subsection, the term, "registration-type class of securities" means—

(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

(f) Plan must be established before employer's due date

(1) In general

A plan meets the requirements of this subsection for a plan year only if it is established

on or before the due date for the filing of the employer's tax return for the taxable year (including any extensions of such date) in which or with which the plan year ends.

(2) Special rule for first year

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an ESOP credit is claimed by the employer.

(g) Transferred amounts must stay in plan even though investment credit is redetermined or recaptured

A plan meets the requirement of this subsection only if it provides that amounts which are transferred to the plan (because of the requirements of section 48(n)(1)) shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the ESOP credit is recaptured or redetermined.

(h) Right to demand employer securities; put option

(1) In general

A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) Plan may distribute cash in certain cases

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities.

(i) Reimbursement for expenses of establishing and administering plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan

As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section 48(n)(1), and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses

As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

(j) Conditional contributions to the plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an ESOP credit is claimed, and

(3) the contribution is returned within 1 year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this section.

(k) Requirements relating to certain withdrawals

Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching ESOP credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974.

(l) Employer securities defined

For purposes of this section—

(1) In general

The term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily tradable common stock

If there is no common stock which meets the requirements of paragraph (1), the term "employer securities" means common stock

issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases

Noncallable preferred stock shall be treated as meeting the requirements of paragraph (1) if such stock is convertible at any time into stock which meets the requirements of paragraph (1) and if such conversion is at a conversion price which (as of the date of the acquisition by the ESOP) is reasonable.

(4) Controlled group of corporations defined

(A) In general

For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) Common parent may own only 50 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(m) Contributions of stock of controlling corporation

If the stock of a corporation which controls another corporation or which controls a corporation controlled by such other corporation is contributed to an ESOP of the controlled corporation, then no gain or loss shall be recognized, because of that contribution, to the controlled corporation. For purposes of this subsection, the term "control" has the same meaning as that term has in section 368(c).

(n) Cross references

(1) For requirements for allowance of ESOP credit, see section 48(n).

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an ESOP credit, see section 6699.

(Added Pub. L. 95-600, title I, § 141(a), Nov. 6, 1978, 92 Stat. 2787.)

REFERENCES IN TEXT

Section 12 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is classified to section 78*l* of Title 15, Commerce and Trade.

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (j), (k)(2), is classified to section 1103(c)(1) of Title 29, Labor.

EFFECTIVE DATE

Section 141(g)(1) of Pub. L. 95-600 provided that: "The amendments made by this section [adding this section and section 6699 of this title, amending sections 46(a)(2)(E), 48(n) to (p), 56(c), 401(a)(21), 404(a)(2), 415(c)(6)(B)(i), (ii), 805(d), 1504(a), 4975(d)(3), (e)(7)] (other than by subsection (f)(3) [amending section 401(a)(21) of this title]) shall apply with respect to qualified investment for taxable years beginning after December 31, 1978. The amendment made by subsection (f)(7) [amending section 415(c)(6)(B)(i), (ii) of this title] shall apply to years beginning after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 401, 415, 1504, 4975, 6699 of this title.

SUBPART B—SPECIAL RULES

§ 410. Minimum participation standards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 125, 401, 406, 407, 408, 411, 412, 413, 414, 4975 of this title; title 29 sections 1003, 1201, 1202, 1321; title 45 section 726.

§ 411. Minimum vesting standards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 402, 410, 413, 414; title 29 sections 1202, 1222, 1343.

§ 414. Definitions and special rules

[*See main edition for text of* (a)]

(b) Employees of controlled group of corporations

For purposes of sections 401, 408(k), 410, 411, and 415, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(c) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of sections 401, 408(k), 410, 411, and 415, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

[*See main edition for text of* (d) *to* (l)]

(As amended Pub. L. 95-600, title I, § 152(d), Nov. 6, 1978, 92 Stat. 2799.)

AMENDMENTS

1978—Subsecs. (b), (c). Pub. L. 95-600 inserted "408(k)," following "sections 401," wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (b), (c) by section 152(d) of Pub. L. 95-600 applicable to taxable years beginning

after Dec. 31, 1978, see section 152(h) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 408 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 105, 125, 410, 411, 412, 415, 805, 4975, 6057, 6058, 6059, 6692 of this title; title 29 sections 1301, 1321.

§ 415. Limitations on benefits and contribution under qualified plans

(a) General rule

[*See main edition for text of (1)*]

(2) Section applies to certain annuities and accounts

Except as provided in paragraph (3), in the case of—

[*See main edition for text of (A) to (D)*]

(E) a simplified employee pension,

(F) a plan described in section 405(a), or

(G) a retirement bond described in section 409,

such contract, annuity plan, account, annuity, plan, or bond shall not be considered to be described in section 403(a), 403(b), 405(a), 408(a), 408(b), 408(k), or 409, as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2).

[*See main edition for text of (3)*]

(b) Limitation for defined benefit plans

[*See main edition for text of (1) to (6)*]

(7) Benefits under certain collectively bargained plans

For a year, the limitation referred to in paragraph (1)(B) shall not apply to benefits with respect to a participant under a defined benefit plan—

(A) which is maintained for such year pursuant to a collective bargaining agreement between employee representatives and one or more employers,

(B) which, at all times during such year, has at least 100 participants,

(C) benefits under which are determined by multiplying a specified amount (which is the same amount for each participant) by the number of the participant's years of service,

(D) which provides that an employee who has at least 4 years of service has a nonforfeitable right to 100 percent of his accrued benefit derived from employer contributions, and

(E) which requires, as a condition of participation in the plan, that an employee complete a period of not more than 60 consecutive days of service with the employer or employers maintaining the plan.

This paragraph shall not apply to a participant whose compensation for any 3 years during the 10-year period immediately preceding the year in which he separates from service exceeded the average compensation for such 3 years of all participants in such plan. For any year for which the paragraph applies to benefits with respect to a participant, paragraph (1)(A) and subsection (d)(1)(A) shall be applied with respect to such participant by substituting "37,500" for "75,000".

(c) Limitation for defined contribution plans

[*See main edition for text of (1) to (5)*]

(6) Special limitation for employee stock ownership plan

[*See main edition for text of (A)*]

(B) For purposes of this paragraph—

(i) the term "employee stock ownership plan" means a leveraged employee stock ownership plan (within the meaning of section 4975(e)(7)) or an ESOP,

(ii) the term "employer securities" has the meaning given to such term by section 409A,

[*See main edition for text of (iii), (iv), and (7); (d)*]

(e) Limitation in case of defined benefit plan and defined contribution plan for same employee

[*See main edition for text of (1) to (4)*]

(5) Special rules for sections 403(b) and 408

For purposes of this section, any annuity contract described in section 403(b) (except in the case of a participant who has elected under subsection (c)(4)(D) to have the provisions of subsection (c)(4)(C) apply), any individual retirement account described in section 408(a), any individual retirement annuity described in section 408(b), any simplified employee pension, and any retirement bond described in section 409, for the benefit of a participant shall be treated as a defined contribution plan maintained by each employer with respect to which the participant has the control required under subsection (b) or (c) of section 414 (as modified by subsection (h)). In the case of any annuity contract described in section 403(b), the amount of the contribution disqualified by reason of subsection (g) shall reduce the exclusion allowance as provided in section 403(b)(2).

[*See main edition for text of (f) to (j)*]

(k) Special rules

(1)[1] Defined benefit plan and defined contribution plan

For purposes of this title, the term "defined contribution plan" or "defined benefit plan" means a defined contribution plan (within

[1] Section enacted without a subsec. (k)(2).

the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

[*See main edition for text of (A) to (E)*]

(F) an individual retirement annuity described in section 408(b),

(G) a simplified employee pension, or

(H) an individual retirement bond described in section 409.

(As amended Pub. L. 95-600, title I, §§ 141(f)(7), 152(g), 153(a), Nov. 6, 1978, 92 Stat. 2795, 2800.)

CODIFICATION

Amendment by section 152(g)(2) of Pub. L. 95-600 which directed amendment of the provision following subpar. (G) of subsec. (b)(2) was executed to the provision following subpar. (G) of subsec. (a)(2) to reflect the probable intent of Congress.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-600, § 152(g)(1), (2), added subpar. (E), redesignated former subpars. (E) and (F) as (F) and (G), respectively, and in provision following subpar. (G) as so redesignated, inserted "408(k)," following "408(b),".

Subsec. (b)(7). Pub. L. 95-600, § 153(a), added subsec. (b)(7).

Subsec. (c)(6)(B)(i). Pub. L. 95-600, § 141(f)(7), substituted "leveraged employee stock ownership plan (within the meaning of section 4975(e)(7)) or an ESOP" for "a plan which meets the requirements of section 4975(e)(7) or section 301(d) of the Tax Reduction Act of 1975".

Subsec. (c)(6)(B)(ii). Pub. L. 95-600, § 141(f)(7), substituted "has the meaning given to such term by section 409A" for "means, in the case of an employee stock ownership plan within the meaning of section 4975(e)(7), qualifying employer securities within the meaning of section 4975(e)(8), but only if they are described in section 301(d)(9)(A) of the Tax Reduction Act of 1975, or, in the case of an employee stock ownership plan described in section 301(d)(2) of the Tax Reduction Act of 1975, employer securities within the meaning of section 301(d)(9)(A) of such Act".

Subsec. (e)(5). Pub. L. 95-600, § 152(g)(3), inserted "any simplified employee pension," following "section 408(b),".

Subsec. (k)(1). Pub. L. 95-600, § 152(g)(4), added subpar. (G) and redesignated former subpar. (G) as (H).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a)(2), (e)(5), (k)(1) by section 152(g) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 152(h) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 408 of this title.

Section 153(b) of Pub. L. 95-600 provided that: "The amendment made by this section [adding subsec. (b)(7) of this section] shall apply to years beginning after December 31, 1978."

Amendment of subsec. (c)(6)(B)(i), (ii) by section 141(f)(7) of Pub. L. 95-600 effective for years beginning after Dec. 31, 1978, and with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409A of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 403, 409A, 414, 4973 of this title; title 29 sections 1002, 1321; title 45 section 726.

PART II—CERTAIN STOCK OPTIONS

§ 423. Employee stock purchase plans

(a) General rule

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963 (other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B)), under an employee stock purchase plan (as defined in subsection (b)) if—

(1) no disposition of such share is made by him within 2 years after the date of the granting of the option nor within 1 year after the transfer of such share to him; and

[*See main edition for text of (2); (b) and (c)*]

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (a)(1) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 424. Restricted stock options

(a) In general

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise after 1949 of a restricted stock option, if—

(1) no disposition of such share is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, and

[*See main edition for text of (2); (b)*]

(c) Special rules

(1) Options under which option price is between 85 percent and 95 percent of value of stock

If no disposition of a share of stock acquired by an individual on his exercise after 1949 of a restricted stock option is made by him within 2 years from the date of the granting of the option nor within 1 year after the transfer of such share to him, at the time the restricted stock option was granted, the option price (computed under subsection (b)(1)) was less than 95 percent of the fair market value at such time of such share, then, in the event of any disposition of such share by him but, or in the event of his death (whenever occurring) while owning such share, there shall be included as compensation (and not as gain upon the sale or exchange of a capital asset) in his gross income, for the taxable year in which falls the date of such disposition or for the taxable year closing with his death, whichever applies—

[*See main edition for text of (A) and (B)*]

(2) Variable price option

For purposes of subsection (b)(1), the term "variable price option" means an option

under which the purchase price of the stock is fixed or determinable under a formula in which the only variable is the fair market value of the stock at any time during a period of 1 year which includes the time the option is exercised; except that in the case of options granted after September 30, 1958, such term does not include any such option in which such formula provides for determining such price by reference to the fair market value of the stock at any time before the option is exercised if such value may be greater than the average fair market value of the stock during the calendar month in which the option is exercised.

[*See main edition for text of (3)*]

(As amended Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (a)(1). Pub. L. 94–455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".
Subsec. (c)(1), (2). Pub. L. 94–455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94–455 provided in part for the substitution of "1 year" for "9 months" in subsecs. (a) and (c) (1), (2) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

Subchapter E—Accounting Periods and Methods of Accounting

PART I—ACCOUNTING PERIODS

§ 441. Period for computation of taxable income

[*See main edition for text of (a) to (e)*]

(f) Election of year consisting of 52–53 weeks

[*See main edition for text of (1)*]

(2) Special rules for 52–53 week year

[*See main edition for text of (A)*]

(B) Change in accounting period

In the case of a change from or to a taxable year described in paragraph (1)—

[*See main edition for text of (i) and (ii)*]

(iii) if such change results in a short period to which subsection (b) of section 443 applies, the taxable income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and by adding the zero bracket amount, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

[*See main edition for text of (3); (g)*]

(As amended May 23, 1977, Pub. L. 95–30, title I, § 102(b)(5), 91 Stat. 137.)

AMENDMENTS

1977—Subsec. (f)(2)(B)(iii). Pub. L. 95–30 substituted "multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions as described in section 443(c)) by 365, by dividing the result by the number of days in the short period, and by adding the zero bracket amount" for "multiplying such income by 365 and dividing the result by the number of days in the short period".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95–30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 443. Returns for a period of less than 12 months

[*See main edition for text of (a)*]

(b) Computation of tax on change of annual accounting period

(1) General rule

If a return is made under paragraph (1) of subsection (a), the taxable income for the short period shall be placed on an annual basis by multiplying the modified taxable income for such short period by 12, dividing the result by the number of months in the short period, and adding the zero bracket amount. The tax shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months.

(2) Exception

(A) Computation based on 12-month period

If the taxpayer applies for the benefits of this paragraph and establishes the amount of this taxable income for the 12-month period described in subparagraph (B), computed as if that period were a taxable year and under the law applicable to that year, then the tax for the short period, computed under paragraph (1), shall be reduced to the greater of the following:

(i) an amount which bears the same ratio to the tax computed on the taxable income for the 12-month period as the modified taxable income computed on the basis of the short period bears to the modified taxable income for the 12-month period; or

(ii) the tax computed on the sum of the modified taxable income for the short period plus the zero bracket amount.

The taxpayer (other than a taxpayer to whom subparagraph (B)(ii) applies) shall compute the tax and file his return without the application of this paragraph.

[*See main edition for text of (B) to (D)*]

(3) Modified taxable income defined

For purposes of this subsection the term "modified taxable income" means, with respect to any period, the gross income for such

period minus the deductions allowed by this chapter for such period (but, in the case of a short period, only the adjusted amount of the deductions for personal exemptions).

[*See main edition for text of* (c)]

(d) Adjustment in computing minimum tax for tax preferences

If a return is made for a short period by reason of subsection (a), then—

(1) in the case of a taxpayer other than a corporation, the alternative minimum taxable income for the short period shall be placed on an annual basis by multiplying that amount by 12 and dividing the result by the number of months in the short period, and the amount computed under paragraph (1) of section 55(a) shall be the same part of the tax computed on the annual basis as the number of months in the short period is of 12 months; and

(2) in the case of a corporation, the $10,000 amount specified in section 56 (relating to minimum tax for tax preferences), modified as provided by section 58, shall be reduced to the amount which bears the same ratio to such specified amount as the number of days in the short period bears to 365.

[*See main edition for text of* (e)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(6), 91 Stat. 137; Nov. 6, 1978, Pub. L. 95-600, title IV, § 421(e)(2), title VII, § 703(*o*)(1)-(3), 92 Stat. 2876, 2943.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 703(*o*)(2), substituted "modified taxable income for such short period" for "gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions)".

Subsec. (b)(2). Pub. L. 95-600, § 703(*o*)(1), substituted in cl. (i) "modified taxable income" for "taxable income" in two places and in cl. (ii) "the sum of the modified taxable income" for "the taxable income" and "plus the zero bracket amount" for "without placing the taxable income on an annual basis".

Subsec. (b)(3). Pub. L. 95-600, § 703(*o*)(3), added subsec. (b)(3).

Subsec. (d). Pub. L. 95-600, § 421(e)(2), substituted catchline "Adjustment in computing minimum tax for tax preferences for" "Adjustment in exclusion for computing minimum tax for tax preferences", redesignated existing provisions as par. (2), and as so redesignated applied par. (2) to corporations, and added par. (1).

1977—Subsec. (b)(1). Pub. L. 95-30 substituted "multiplying the gross income for such short period (minus the deductions allowed by this chapter for the short period, but only the adjusted amount of the deductions for personal exemptions) by 12, dividing the result by the number of months in the short period, and adding the zero bracket amount" for "multiplying such income by 12 and dividing the result by the number of months in the short period".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 703(*o*)(4) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsecs. (b)(1), (b)(2)(A), (b)(2)(A)(ii), (b)(3) of this section] shall apply to taxable years beginning after December 31, 1976."

Amendment of subsec. (d) by section 421(e)(2) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 441, 536, 546, 557, 818, 852, 857, 6012, 6013 of this title.

PART II—METHODS OF ACCOUNTING

SUBPART A—METHODS OF ACCOUNTING IN GENERAL

§ 447. Method of accounting for corporations engaged in farming

(a) General rule

Except as otherwise provided by law, the taxable income from farming of—

(1) a corporation engaged in the trade or business of farming, or

(2) a partnership engaged in the trade or business of farming, if a corporation is a partner in such partnership,

shall be computed on an accrual method of accounting and with the capitalization of preproductive period expenses described in subsection (b). This section shall not apply to the trade or business of operating a nursery or sod farm or to the raising or harvesting of trees (other than fruit and nut trees).

[*See main edition for text of* (b) *to* (e)]

(f) Coordination with section 481

In the case of any taxpayer required by this section to change its method of accounting for any taxable year—

[*See main edition for text of* (1) *and* (2)]

(3) under regulations prescribed by the Secretary, the net amount of adjustments required by section 481(a) to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change.

(g) Certain annual accrual accounting methods

[*See main edition for text of* (1)]

(2) Annual accrual method of accounting defined

For purposes of paragraph (1), the term "annual accrual method of accounting" means a method under which revenues, costs, and expenses are computed on an accrual method of accounting and the preproductive period expenses incurred during the taxable year are charged to harvested crops or deducted in determining the taxable income for such years.

[*See main edition for text of* (3)]

(h) Exception for certain closely held corporations

(1) In general

This section shall not apply to any corporation if, on October 4, 1976, and at all times thereafter—

(A) members of 2 families (within the meaning of subsection (d)(1)) have owned (directly or through the application of subsection (d)) at least 65 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 65 percent of the total number of shares of all other classes of stock of such corporation; or

(B)(i) members of 3 families (within the meaning of subsection (d)(1)) have owned (directly or through the application of subsection (d)) at least 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of such corporation; and

(ii) substantially all of the stock of such corporation which is not so owned (directly or through the application of subsection (d)) by members of such 3 families is owned directly—

(I) by employees of the corporation or members of their families (within the meaning of section 267(c)(4)), or

(II) by a trust for the benefit of the employees of such corporation which is described in section 401(a) and which is exempt from taxation under section 501(a).

(2) Stock held by employees, etc.

For purposes of this subsection, stock which—

(A) is owned directly by employees of the corporation or members of their families (within the meaning of section 267(c)(4)) or by a trust described in paragraph (1)(B)(ii)(II), and

(B) was acquired on or after October 4, 1976, from the corporation or from a member of a family which, on October 4, 1976, was described in subparagraph (A) or (B)(i) of paragraph (1).

shall be treated as owned by a member of a family which, on October 4, 1976, was described in subparagraph (A) or (B)(i) of paragraph (1).

(3) Corporation must be engaged in farming

This subsection shall apply only in the case of a corporation which was, on October 4, 1976, and at all times thereafter, engaged in the trade or business of farming.

(As amended Pub. L. 95-600, title III, §§ 351(a), 353(a), title VII, §§ 701(*l*)(1), 703(d), Nov. 6, 1978, 92 Stat. 2846, 2847, 2906, 2939.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, §§ 353(a), 703(d), substituted in provisions following par. (2) "preproductive period expenses" for "preproductive expenses" and "nursery or sod farm" for "nursery".

Subsec. (f)(3). Pub. L. 95-600, § 701(*l*)(1), struck out "(except as otherwise provided in such regulations)" preceding "be taken" and inserted "(or the remaining taxable years where there is a stated future life of less than 10 taxable years)" following "10 taxable years".

Subsec. (g)(2). Pub. L. 95-600, § 703(d), substituted "preproductive period expenses" for "preproductive expenses".

Subsec. (h). Pub. L. 95-600, § 351(a), added subsec. (h).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a), (g)(2) by section 703(d) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 353(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (a) of this section] shall apply to taxable years beginning after December 31, 1976."

Section 701(*l*)(4) of Pub. L. 95-600 provided that: "The amendment made by paragraphs (1) [amending subsec. (f)(3) of this section] and (3) [amending section 464(c)(2) of this title] shall take effect as if included in section 447 or 464 (as the case may be) of the Internal Revenue Code of 1954 at the time of the enactment of such sections [Oct. 4, 1976]."

Section 351(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [adding subsec. (h) of this section] shall apply to taxable years beginning after December 31, 1977."

EFFECTIVE DATE

Section 207(c)(2) of Pub. L. 94-455, as amended by Pub. L. 95-30, title IV, § 404, May 23, 1977, 91 Stat. 155, provided that:

"(A) In general—Except as provided in subparagraph (B), the amendments made by paragraph (1) [adding this section] shall apply to taxable years beginning after December 31, 1976.

"(B) Special rule for certain corporations.—In the case of a corporation engaged in the trade or business of farming and with respect to which—

"(i) members of two families (within the meaning of paragraph (1) of section 447(d) of the Internal Revenue Code of 1954, as added by paragraph (1)) owned, on October 4, 1976 (directly or through the application of such section 447(d)), at least 65 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 65 percent of the total number of shares of all other classes of stock of such corporation; or

"(ii) members of three families (within the meaning of paragraph (1) of such section 447(d)) owned, on October 4, 1976 (directly or through the application of such section 447(d)), at least 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote, and at least 50 percent of the total number of shares of all other classes of stock of such corporation; and substantially all of the stock of such corporation which was not so owned (directly or through the application of such section 447(d)), by members of such three families was owned, on October 4, 1976, directly—

"(I) by employees of the corporation or members of the families (within the meaning of section 267(c)(4) of such Code) of such employees, or

"(II) by a trust for the benefit of the employees of such corporation which is described in section 401(a) of such Code and which is exempt from taxation under section 501(a) of such Code,

the amendments made by paragraph (1) shall apply to taxable years beginning after December 31, 1977."

ACCOUNTING FOR GROWING CROPS

Section 352 of Pub. L. 95-600 provided that:

"(a) APPLICATION OF SECTION.—This section shall apply to a taxpayer who—

"(1) is a farmer, nurseryman, or florist,

"(2) is on an accrual method of accounting, and

"(3) is not required by section 447 of the Internal Revenue Code of 1954 to capitalize preproductive period expenses.

"(b) TAXPAYER MAY NOT BE REQUIRED TO INVENTORY GROWING CROPS.—A taxpayer to whom this section applies may not be required to inventory growing crops for any taxable year beginning after December 31, 1977.

"(c) TAXPAYER MAY ELECT TO CHANGE TO CASH METHOD.—A taxpayer to whom this section applies may, for any taxable year beginning after December 31, 1977 and before January 1, 1981, change to the cash receipts and disbursements method of accounting with respect to any trade or business in which the principal activity is growing crops.

"(d) SECTION 481 OF CODE TO APPLY.—Any change in the way in which a taxpayer accounts for the costs of growing crops resulting from the application of subsection (b) or (c)—

"(1) shall not require the consent of the Secretary of the Treasury or his delegate, and

"(2) shall be treated, for purposes of section 481 of the Internal Revenue Code of 1954 as a change in the method of accounting initiated by the taxpayer.

"(e) GROWING CROPS.—For purposes of this section, the term 'Growing crops' does not include trees grown for lumber, pulp, or other nonlife purposes."

AUTOMATIC TEN YEAR ADJUSTMENT FOR FARMING SYNDICATES CHANGING TO ACCRUAL ACCOUNTING

Section 701(*l*)(2) of Pub. L. 95-600 provided that:

"If—

"(A) a farming syndicate (within the meaning of section 464(c) of the Internal Revenue Code of 1954) was in existence on December 31, 1975, and

"(B) such syndicate elects an accrual method of accounting (including the capitalization of preproductive period expenses described in section 447(b) of such Code) for a taxable year beginning before January 1, 1979,

then such election shall be treated as having been made with the consent of the Secretary of the Treasury or his delegate and, under regulations prescribed by the Secretary of the Treasury or his delegate, the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income shall be taken into account in each of the 10 taxable years (or the remaining taxable years where there is a stated future life of less than 10 taxable years) beginning with the year of change."

SUBPART B—TAXABLE YEAR FOR WHICH ITEMS OF GROSS INCOME INCLUDED

Sec.
457. Deferred compensation plans with respect to service for State and local governments.
458. Magazines, paperbacks, and records returned after the close of the taxable year.

AMENDMENTS

1978—Pub. L. 95-600, title I, § 131(b), title III, § 372(b), Nov. 6, 1978, 92 Stat. 2782, 2862, added item 457 "Deferred compensation plans with respect to service for State and local governments" and item 458 "Magazines, paperbacks, and records returned after the close of the taxable year".

§ 451. General rule for taxable year of inclusion

YEAR OF INCLUSION FOR DISASTER OR DEFICIENCY PAYMENTS RECEIVED IN 1978; ELECTION

Pub. L. 95-258, § 1, Apr. 7, 1978, 92 Stat. 195, provided that:

"(a) IN GENERAL.—In the case of a taxpayer reporting on the cash receipts and disbursements method of accounting, if—

"(1)(A) the taxpayer receives in his first taxable year beginning in 1978 payments under the Agricultural Act of 1949, as amended, [see Short Title note set out under section 1421 of Title 7, Agriculture], as a result of—

"(i) the destruction or damage to crops caused by drought, flood, or any other natural disaster, or

"(ii) the inability to plant crops because of such a natural disaster, and

"(B) the taxpayer establishes that, under his practice, income from such crops could have been reported for his last taxable year beginning in 1977, or

"(2)(A) the taxpayer receives in his first taxable year beginning in 1978 deficiency (or 'target price') payments under the Agricultural Act of 1949, as amended, for any 1977 crop, and

"(B) the fifth month of such crop's marketing year ends before December 1, 1977.

then the taxpayer may elect to include such proceeds in income for his last taxable year beginning in 1977.

"(b) MAKING AND EFFECT OF ELECTION.—An election under this section for any taxable year shall be made at such time and in such manner as the Secretary of the Treasury may by regulations prescribe and shall apply with respect to all proceeds described in subsection (a) which were received by the taxpayer."

PRIVATE DEFERRED COMPENSATION PLANS; TAXABLE YEARS ENDING ON OR AFTER FEBRUARY 1, 1978

Pub. L. 95-600, title I, § 132, Nov. 6, 1978, 92 Stat. 2782, provided that:

"(a) GENERAL RULE.—The taxable year of inclusion in gross income of any amount covered by a private deferred compensation plan shall be determined in accordance with the principles set forth in regulations, rulings, and judicial decisions relating to deferred compensation which were in effect on February 1, 1978.

"(b) PRIVATE DEFERRED COMPENSATION PLAN DEFINED.—

"(1) IN GENERAL.—For purposes of this section, the term 'private deferred compensation plan' means a plan, agreement, or arrangement—

"(A) where the person for whom the service is performed is not a State (within the meaning of paragraph (1) of section 457(d) of the Internal Revenue Code of 1954) and not an organization which is exempt from tax under section 501 of such Code, and

"(B) under which the payment or otherwise making available of compensation is deferred.

"(2) CERTAIN PLANS EXCLUDED.—Paragraph (1) shall not apply to—

"(A) a plan described in section 401(a) of the Internal Revenue Code of 1954 which includes a trust, exempt from tax under section 501(a) of such Code,

"(B) an annuity plan or contract described in section 403 of such Code,

"(C) a qualified bond purchase plan described in section 405(a) of such Code,

"(D) that portion of any plan which consists of a transfer of property described in section 83 (determined without regard to subsection (e) thereof of such Code, and

"(E) that portion of any plan which consists of a trust to which section 402(b) of such Code applies.

"(c) EFFECTIVE DATE.—This section shall apply to taxable years ending on or after February 1, 1978."

§ 453. Installment method

[*See main edition for text of* (a) *and* (b)]

(c) Change from accrual to installment basis

[*See main edition for text of* (1) *and* (2)]

(3) Rule for applying paragraph (2)

For purposes of paragraph (2), the portion of the tax for a prior taxable year, or for the adjustment year, which is attributable to the gross profit described in such paragraph is

that amount which bears the same ratio to the tax imposed by this chapter, other than by section 56, for such taxable year (computed without regard to paragraph (2)) as the gross profit described in such paragraph bears to the gross income for such taxable year.

[See main edition for text of (4) and (5); (d) and (e)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(3), 92 Stat. 2941.)

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95-600 struck out "(or by the corresponding provisions of prior revenue laws)" following "imposed by this chapter", and struck out the last sentence providing that certain provisions of chapter 1 of the I.R.C. of 1939 shall be treated as the corresponding provisions of the I.R.C. of 1954.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (c)(3) by section 703(j)(3) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

§ 457. Deferred compensation plans with respect to service for State and local governments

(a) Year of inclusion in gross income

In the case of a participant in an eligible State deferred compensation plan, any amount of compensation deferred under the plan, and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary.

(b) Eligible State deferred compensation plan defined

For purposes of this section, the term "eligible State deferred compensation plan" means a plan established and maintained by a State—

(1) in which only individuals who perform service for the State may be participants,

(2) which provides that (except as provided in paragraph (3)) the maximum that may be deferred under the plan for the taxable year shall not exceed the lesser of—

(A) $7,500, or

(B) 33⅓ percent of the participant's includible compensation,

(3) which may provide that, for 1 or more of the participant's last 3 taxable years ending before he attains normal retirement age under the plan, the ceiling set forth in paragraph (2) shall be the lesser of—

(A) $15,000, or

(B) the sum of—

(i) the plan ceiling established for purposes of paragraph (2) for the taxable year (determined without regard to this paragraph), plus

(ii) so much of the plan ceiling established for purposes of paragraph (2) for taxable years before the taxable year as has not theretofore been used under paragraph (2) or this paragraph,

(4) which provides that compensation will be deferred for any calendar month only if an agreement providing for such deferral has been entered into before the beginning of such month,

(5) which does not provide that amounts payable under the plan will be made available to participants or other beneficiaries earlier than when the participant is separated from service with the State or is faced with an unforeseeable emergency (determined in the manner prescribed by the Secretary by regulation), and

(6) which provides that—

(A) all amounts of compensation deferred under the plan,

(B) all property and rights purchased with such amounts, and

(C) all income attributable to such amounts, property, or rights,

shall remain (until made available to the participant or other beneficiary) solely the property and rights of the State (without being restricted to the provision of benefits under the plan) subject only to the claims of the State's general creditors.

A plan which is administered in a manner which is inconsistent with the requirements of any of the preceding paragraphs shall be treated as not meeting the requirements of such paragraph as of the first plan year beginning more than 180 days after the date of notification by the Secretary of the inconsistency unless the State corrects the inconsistency before the first day of such plan year.

(c) Individuals who are participants in more than one plan

(1) In general

The maximum amount of the compensation of any one individual which may be deferred under subsection (a) during any taxable year shall not exceed $7,500 (as modified by any adjustment provided under subsection (b)(3)).

(2) Coordination with section 403(b)

In applying paragraph (1) of this subsection and paragraphs (2) and (3) of subsection (b), an amount excluded during a taxable year under section 403(b) shall be treated as an amount deferred under subsection (a). In applying clause (ii) of section 403(b)(2)(A), an amount deferred under subsection (a) for any year of service shall be taken into account as if described in such clause.

(d) Other definitions and special rules

For purposes of this section—

(1) State

The term "State" means a State, a political subdivision of a State, and an agency or instrumentality of a State or political subdivision of a State.

(2) Performance of service

The performance of service includes performance of service as an independent contractor.

(3) Participant

The term "participant" means an individual who is eligible to defer compensation under the plan.

(4) Beneficiary

The term "beneficiary" means a beneficiary of the participant, his estate, or any other person whose interest in the plan is derived from the participant.

(5) Includible compensation

The term "includible compensation" means compensation for service performed for the State which (taking into account the provisions of this section and section 403(b)) is currently includible in gross income.

(6) Compensation taken into account at present value

Compensation shall be taken into account at its present value.

(7) Community property laws

The amount of includible compensation shall be determined without regard to any community property laws.

(8) Income attributable

Gains from the disposition of property shall be treated as income attributable to such property.

(9) Section to apply to rural electric cooperatives

(A) In general

This section shall apply with respect to any participant in a plan of a rural electric cooperative in the same manner and to the same extent as if such plan were a plan of a State.

(B) Rural electric cooperative defined

For purposes of subparagraph (A), the term "rural electric cooperative" means—

(i) any organization described in section 501(c)(12) which is exempt from tax under section 501(a) and which is engaged primarily in providing electric service, and

(ii) any organization described in section 501(c)(6) which is exempt from tax under section 501(a) and all the members of which are organizations described in clause (i).

(e) Tax treatment of participants where plan or arrangement of State is not eligible

(1) In general

In the case of a plan of a State providing for a deferral of compensation, if such plan is not an eligible State deferred compensation plan, then—

(A) the compensation shall be included in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation, and

(B) the tax treatment of any amount made available under the plan to a participant or beneficiary shall be determined under section 72 (relating to annuities, etc.).

(2) Exceptions

Paragraph (1) shall not apply to—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan or contract described in section 403,

(C) a qualified bond purchase plan described in section 405(a),

(D) that portion of any plan which consists of a transfer of property described in section 83, and

(E) that portion of any plan which consists of a trust to which section 402(b) applies.

(3) Definitions

For purposes of this subsection—

(A) Plan includes arrangements, etc.

The term "plan" includes any agreement or arrangement.

(B) Substantial risk of forfeiture

The rights of a person to compensation are subject to a substantial risk of forfeiture if such person's rights to such compensation are conditioned upon the future performance of substantial services by any individual.

(Added Pub. L. 95-600, title I, § 131(a), Nov. 6, 1978, 92 Stat. 2779.)

EFFECTIVE DATE

Section 131(c)(1) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1978."

TRANSITIONAL RULES

Section 131(c)(2) of Pub. L. 95-600 provided that:

"(A) IN GENERAL.—In the case of any taxable year beginning after December 31, 1978, and before January 1, 1982—

"(i) any amount of compensation deferred under a plan of a State providing for a deferral of compensation (other than a plan described in section 457(e)(2) of the Internal Revenue Code of 1954), and any income attributable to the amounts so deferred, shall be includible in gross income only for the taxable year in which such compensation or other income is paid or otherwise made available to the participant or other beneficiary, but

"(ii) the maximum amount of the compensation of any one individual which may be excluded from gross income by reason of clause (i) and by reason of section 457(a) of such Code during any such taxable year shall not exceed the lesser of—

"(I) $7,500, or

"(II) 33⅓ percent of the participant's includible compensation.

"(B) APPLICATION OF CATCH-UP PROVISIONS IN CERTAIN CASES.—If, in the case of any participant for any taxable year, all of the plans are eligible State deferred compensation plans, then clause (ii) of subparagraph (A) of this paragraph shall be applied with the modification provided by paragraph (3) of section 457(b) of such Code.

"(C) APPLICATIONS OF CERTAIN COORDINATION PROVISIONS.—In applying clause (ii) of subparagraph (A) of this paragraph and section 403(b)(2)(A)(ii) of such Code, rules similar to the rules of section 457(c)(2) of such Code shall apply.

"(D) MEANING OF TERMS.—Except as otherwise provided in this paragraph, terms used in this paragraph shall have the same meaning as when used in section 457 of such Code."

§ 458. Magazines, paperbacks, and records returned after the close of the taxable year

(a) Exclusion from gross income

A taxpayer who is on an accrual method of accounting may elect not to include in the gross income for the taxable year the income attributable to the qualified sale of any magazine, pa-

perback, or record which is returned to the taxpayer before the close of the merchandise return period.

(b) Definitions and special rules

For purposes of this section—

(1) Magazine

The term "magazine" includes any other periodical.

(2) Paperback

The term "paperback" means any book which has a flexible outer cover and the pages of which are affixed directly to such outer cover. Such term does not include a magazine.

(3) Record

The term "record" means a disc, tape, or similar object on which musical, spoken, or other sounds are recorded.

(4) Separate application with respect to magazines, paperbacks, and records

If a taxpayer makes qualified sales of more than one category of merchandise in connection with the same trade or business, this section shall be applied as if the qualified sales of each such category were made in connection with a separate trade or business. For purposes of the preceding sentence, magazines, paperbacks, and records shall each be treated as a separate category of merchandise.

(5) Qualified sale

A sale of a magazine, paperback, or record is a qualified sale if—

(A) at the time of sale, the taxpayer has a legal obligation to adjust the sales price of such magazine, paperback, or record if it is not resold, and

(B) the sales price of such magazine, paperback, or record is adjusted by the taxpayer because of a failure to resell it.

(6) Amount excluded

The amount excluded under this section with respect to any qualified sale shall be the lesser of—

(A) the amount covered by the legal obligation described in paragraph (5)(A), or

(B) the amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(7) Merchandise return period

(A) Except as provided in subparagraph (B), the term "merchandise return period" means, with respect to any taxable year—

(i) in the case of magazines, the period of 2 months and 15 days first occurring after the close of taxable year, or

(ii) in the case of paperbacks and records, the period of 4 months and 15 days first occurring after the close of the taxable year.

(B) The taxpayer may select a shorter period than the applicable period set forth in subparagraph (A).

(C) Any change in the merchandise return period shall be treated as a change in the method of accounting.

(8) Certain evidence may be substituted for physical return of merchandise

Under regulations prescribed by the Secretary, the taxpayer may substitute, for the physical return of magazines, paperbacks, or records required by subsection (a), certification or other evidence that the magazine, paperback, or record has not been resold and will not be resold if such evidence—

(A) is in the possession of the taxpayer at the close of the merchandise return period, and

(B) is satisfactory to the Secretary.

(9) Repurchased by the taxpayer not treated as resale

A repurchase by the taxpayer shall be treated as an adjustment of the sales price rather than as a resale.

(c) Qualified sales to which section applies

(1) Election of benefits

This section shall apply to qualified sales of magazines, paperbacks, or records, as the case may be, if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such sales are made. An election under this section may be made without the consent of the Secretary. The election shall be made in such manner as the Secretary may by regulations prescribed and shall be made for any taxable year not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(2) Scope of election

An election made under this section shall apply to all qualified sales of magazines, paperbacks, or records, as the case may be, made in connection with the trade or business with respect to which the taxpayer has made the election.

(3) Period to which election applies

An election under this section shall be effective for the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Treatment as method of accounting

Except to the extent inconsistent with the provisions of this section, for purposes of this subtitle, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(d) 5-year spread of transitional adjustments for magazines

In applying section 481(c) with respect to any election under this section which applies to magazines, the period for taking into account any decrease in taxable income resulting from the application of section 481(a)(2) shall be the taxable year for which the election is made and the 4 succeeding taxable years.

(e) Suspense account for paperbacks and records

(1) In general

In the case of any election under this section which applies to paperbacks or records, in lieu of applying section 481, the taxpayer

shall establish a suspense account for the trade or business for the taxable year for which the election is made.

(2) Initial opening balance

The opening balance of the account described in paragraph (1) for the first taxable year to which the election applies shall be the largest dollar amount of returned merchandise which would have been taken into account under this section for any of the 3 immediately preceding taxable years if this section had applied to such preceding 3 taxable years. This paragraph and paragraph (3) shall be applied by taking into account only amounts attributable to the trade or business for which such account is established.

(3) Adjustments in suspense account

At the close of each taxable year the suspense account shall be—

(A) reduced the excess (if any) of—

(i) the opening balance of the suspense account for the taxable year, over

(ii) the amount excluded from gross income for the taxable year under subsection (a), or

(B) increased (but not in excess of the initial opening balance) by the excess (if any) of—

(i) the amount excluded from gross income for the taxable year under subsection (a), over

(ii) the opening balance of the account for the taxable year.

(4) Gross income adjustments

(A) Reductions excluded from gross income

In the case of any reduction under paragraph (3)(A) in the account for the taxable year, an amount equal to such reduction shall be excluded from gross income for such taxable year.

(B) Increases added to gross income

In the case of any increase under paragraph (3)(B) in the account for the taxable year, an amount equal to such increase shall be included in gross income for such taxable year.

If the initial opening balance exceeds the dollar amount of returned merchandise which would have been taken into account under subsection (a) for the taxable year preceding the first taxable year for which the election is effective if this section had applied to such preceding taxable year, then an amount equal to the amount of such excess shall be included in gross income for such first taxable year.

(5) Subchapter C transactions

The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party to the transaction by reason of subchapter C shall be determined under regulations prescribed by the Secretary.

(Added Pub. L. 95-600, title III, § 372(a), Nov. 6, 1978, 92 Stat. 2860.)

EFFECTIVE DATE

Section 372(c) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after September 30, 1979."

SUBPART C—TAXABLE YEAR FOR WHICH DEDUCTIONS TAKEN

Sec.
465. Deductions limited to amount at risk.
466. Qualified discount coupons redeemed after close of taxable year.

AMENDMENTS

1978—Pub. L. 95-600, title II, § 201(c)(2), title III, § 373(b), Nov. 6, 1978, 92 Stat. 2816, 2865, struck out in item 465 "in case of certain activities" following "amount at risk" and added item 466 "Qualified discount coupons redeemed after close of taxable year".

§ 464. Limitations on deductions in case of farming syndicates

[*See main edition for text of* (a) *and* (b)]

(c) Farming syndicate defined

[*See main edition for text of* (1)]

(2) Holdings attributable to active management

For purposes of paragraph (1)(B), the following shall be treated as an interest which is not held by a limited partner or a limited entrepreneur:

[*See main edition for text of* (A) *to* (D)]

(E) any interest held by a member of the family (or a spouse of any such member) or a grandparent of an individual described in subparagraph (A), (B), (C), or (D) if the interest in the partnership or the enterprise is attributable to the active participation of the individual described in subparagraph (A), (B), (C), or (D).

For purposes of subparagraph (A), where one farm is substituted for or added to another farm, both farms shall be treated as one farm. For purposes of subparagraph (E), the term "family" has the meaning given to such term by section 267(c)(4).

[*See main edition for text of* (d) *and* (e)]

(As amended Pub. L. 95-600, title VII, § 701(*l*)(3), Nov. 6, 1978, 92 Stat. 2907.)

AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95-600 substituted in subpar. (E) "(or a spouse of any such member)" for "(within the meaning of section 267(c)(4))" and provided that for purposes of subpar. (E) the term "family" has the meaning given to such term by section 267(c)(4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective as if included in this section or section 447 of this title at the time of their enactment, Oct. 4, 1976, see section 701(*l*)(4) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 447 of this title.

§ 465. Deductions limited to amount at risk

(a) Limitation to amount at risk

(1) In general

In the case of—

(A) an individual,

(B) an electing small business corporation (as defined in section 1371(b)), and

(C) a corporation with respect to which the stock ownership requirement of paragraph (2) of section 542(a) (determined by reference to the rules contained in section 318 rather than under section 544) is met,

engaged in an activity to which this section applies, any loss from such activity for the taxable year shall be allowed only to the extent of the aggregate amount with respect to which the taxpayer is at risk (within the meaning of subsection (b)) for such activity at the close of the taxable year.

(2) Deduction in succeeding year

Any loss from an activity to which this section applies not allowed under this section for the taxable year shall be treated as a deduction allocable to such activity in the first succeeding taxable year.

[See main edition for text of (b)]

(c) Activities to which section applies

(1) Types of activities

This section applies to any taxpayer engaged in the activity of—

(A) holding, producing, or distributing motion picture films or video tapes,

(B) farming (as defined in section 464(e)),

(C) leasing any section 1245 property (as defined in section 1245(a)(3)),

(D) exploring for, or exploiting, oil and gas resources as a trade or business or for the production of income, or

(E) exploring for, or exploiting, geothermal deposits (as defined in section 613(e)(3)).

(2) Separate activities

For purposes of this section, a taxpayer's activity with respect to each—

(A) film or video tape,

(B) section 1245 property which is leased or held for leasing,

(C) farm,

(D) oil and gas property (as defined under section 614), or

(E) geothermal property (as determined under section 614),

shall be treated as a separate activity. A partner's interest in a partnership or a shareholder's interest in an electing small business corporation shall be treated as a single activity to the extent that the partnership or an electing small business corporation is engaged in activities described in any subparagraph of this paragraph.

(3) Extension to other activities

(A) In general

In the case of taxable years beginning after December 31, 1978, this section also applies to each activity—

(i) engaged in by the taxpayer in carrying on a trade or business or for the production of income, and

(ii) which is not described in paragraph (1).

(B) Aggregation of activities where taxpayer actively participates in management of trade or business

Except as provided in subparagraph (C), for purposes of this section, activities described in subparagraph (A) which constitute a trade or business shall be treated as one activity if—

(i) the taxpayer actively participates in the management of such trade or business, or

(ii) such trade or business is carried on by a partnership or electing small business corporation (as defined in section 1371(b)) and 65 percent or more of the losses for the taxable year is allocable to persons who actively participate in the management of the trade or business.

(C) Aggregation or separation of activities under regulations

The Secretary shall prescribe regulations under which activities described in subparagraph (A) shall be aggregated or treated as separate activities.

(D) Exclusions

(i) Real property

In the case of activities described in subparagraph (A), the holding of real property (other than mineral property) shall be treated as a separate activity, and subsection (a) shall not apply to losses from such activity. For purposes of the preceding sentence, personal property and services which are incidental to making real property available as living accommodations shall be treated as part of the activity of holding such real property.

(ii) Equipment leasing by closely-held corporations

(I) In the case of a corporation described in subsection (a)(1)(C) actively engaged in leasing equipment which is section 1245 property, the activity of leasing such equipment shall be treated, for purposes of subsection (a), as a separate activity and subsection (a) shall not apply to losses from such activity.

(II) A corporation described in subsection (a)(1)(C) shall not be considered to be actively engaged in leasing such equipment unless 50 percent or more of the gross receipts of the corporation for the taxable year are attributable, under regulations prescribed by the Secretary, to leasing and selling such equipment.

(III) For purposes of this paragraph, the leasing of master sound recordings, and other similar contractual arrangements with respect to tangible or intangible assets associated with literary, artistic, or musical properties shall not be treated as leasing equipment which is section 1245 property.

(IV) In the case of a controlled group of corporations (within the meaning of section 1563(a)), this paragraph shall be applied by treating the controlled group as a single corporation.

(E) Application of subsection (b)(3)

In the case of an activity described in subparagraph (A), subsection (b)(3) shall apply only to the extent provided in regulations prescribed by the Secretary.

(d) Definition of loss

For purposes of this section, the term "loss" means the excess of the deductions allowable under this chapter for the taxable year (determined without regard to the first sentence of subsection (a)) and allocable to an activity to which this section applies over the income received or accrued by the taxpayer during the taxable year from such activity.

(e) Recapture of losses where amount at risk is less than zero

(1) In general

If zero exceeds the amount for which the taxpayer is at risk in any activity at the close of any taxable year—

(A) the taxpayer shall include in his gross income for such taxable year (as income from such activity) an amount equal to such excess, and

(B) an amount equal to the amount so included in gross income shall be treated as a deduction allocable to such activity for the first succeeding taxable year.

(2) Limitation

The excess referred to in paragraph (1) shall not exceed—

(A) the aggregate amount of the reductions required by subsection (b)(5) with respect to the activity for all prior taxable years beginning after December 31, 1978, reduced by

(B) the amounts previously included in gross income with respect to such activity under this subsection.

(As amended Pub. L. 95-600, title II, §§ 201(a), (c)(1), 202, 203, title VII, § 701(k)(2), Nov. 6, 1978, 92 Stat. 2814, 2816, 2906; Pub. L. 95-618, title IV, § 402(d), Nov. 9, 1978, 92 Stat. 3202.)

AMENDMENTS

1978—Pub. L. 95-600, § 201(c)(1), in catchline substituted "Deductions limited to amount at risk" for "Deductions limited to amount at risk in case of certain activities".

Subsec. (a)(1). Pub. L. 95-600, § 202, redesignated existing provisions as subsec. (a)(1) and, as so designated, substituted provisions relating to limitations with respect to an individual, an electing small business corporation defined under section 1371(b) of this title, and a corporation meeting the stock ownership requirements of section 542(a)(2) of this title and the rules of section 318 of this title, for provisions relating to limitations with respect to a taxpayer other than a corporation which is neither an electing small business corporation defined under section 1371(b) of this title, nor a personal holding company defined under section 542 of this title.

Subsec. (a)(2). Pub. L. 95-600, § 202, added subsec. (a)(2).

Subsec. (c)(1). Pub. L. 95-618, § 402(d)(1), added subpar. (E).

Subsec. (c)(2). Pub. L. 95-618, § 402(d)(2), added subpar. (E).

Subsec. (c)(3). Pub. L. 95-600, § 201(a), added subsec. (c)(3).

Subsec. (d). Pub. L. 95-600, § 701(k)(2), substituted "(determined without regard to the first sentence of subsection (a))" for "(determined without regard to this section)".

Subsec. (e). Pub. L. 95-600, § 203, added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 263 of this title.

Section 204(a) of Pub. L. 95-600 provided that: "The amendments made by this subtitle [amending the heading and subsecs. (a), (c)(3) and (e) of this section and section 704(d) of this title and enacting provisions set out as notes under this section and section 704 of this title] shall apply to taxable years beginning after December 31, 1978."

Section 701(k)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsec. (d) of this section and a provision set out as a note under this section] shall take effect on October 4, 1976."

EFFECTIVE DATE AND TRANSITIONAL RULES

Section 204(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 701(k)(1), Nov. 6, 1978, 92 Stat. 2906, provided that:

* * * * *

"(3) Special transitional rules for leasing activities.—

"(A) Rule for leases other than operating leases.—In the case of any activity described in section 465(c)(1)(C) of the Internal Revenue Code of 1954, the amendments made by this section shall not apply with respect to—

* * * * *

TRANSITIONAL RULES FOR RECAPTURE PROVISIONS AND LEASING ACTIVITIES

Section 204(b) of Pub. L. 95-600 provided that:

"(1) RECAPTURE PROVISIONS.—If the amount for which the taxpayer is at risk in any activity as of the close of the taxpayer's last taxable year beginning before January 1, 1979, is less than zero, section 465(e)(1) of the Internal Revenue Code of 1954 (as added by section 203 of this Act) shall be applied with respect to such activity of the taxpayer by substituting such negative amount for zero.

"(2) SPECIAL TRANSITIONAL RULES FOR LEASING ACTIVITIES.—

"(A) RULE FOR LEASES.—In the case of any activity described in section 465(c)(1)(C) of such Code in which a corporation described in section 465(c)(1)(C) of such Code is engaged, the amendments made by this section [so in original. Probably should be "subtitle" which amended sections 465 and 704 of this title] shall not apply with respect to—

"(i) leases entered into before November 1, 1978, and

"(ii) leases where the property was ordered by the lessor or lessee before November 1, 1978.

"(B) HOLDING OF INTERESTS FOR PURPOSES OF SUBPARAGRAPH (A).—Subparagraph (A) shall apply only to taxpayers who held their interests in the property on October 31, 1978."

§ 466. Qualified discount coupons redeemed after close of taxable year

(a) Allowance of deduction

At the election of a taxpayer whose taxable income is computed under an accrual method of accounting, the deduction allowable under

this chapter for the redemption costs of qualified discount coupons shall be an amount equal to the sum of—

(1) such costs incurred by the taxpayer with respect to coupons—

(A) which were outstanding at the close of the taxable year, and

(B) which were received by the taxpayer before the close of the redemption period for the taxable year, plus

(2) such costs (other than costs properly taken into account under paragraph (1) for a prior taxable year) incurred by the taxpayer during the taxable year.

(b) Qualified discount coupons

For purposes of this section—

(1) In general

The term "qualified discount coupon" means a discount coupon which—

(A) was issued by the taxpayer,

(B) is redeemable by the taxpayer, and

(C) allows a discount on the purchase price of merchandise or other tangible personal property.

(2) Method of issuance not taken into account

The determination of whether or not a discount coupon is a qualified discount coupon shall be made without regard to whether the coupon was issued through a newspaper, magazine, or other publication, by mail, on the pack or in the pack of merchandise, or otherwise.

(3) Discount on item cannot exceed $5

A coupon shall not be a qualified discount coupon if—

(A) the face amount of such coupon is more than $5, or

(B) such coupon may be used with other coupons to bring about a price discount of more than $5 with respect to any item.

(4) There must be redemption chain

A coupon shall not be a qualified discount coupon if the issuer directly redeems such coupon from the person using the coupon to receive a price discount. For purposes of the preceding sentence, corporations which are members of the same controlled group of corporations (within the meaning of section 1563(a)[1] as the issuer shall be treated as the issuer.

(5) Redeemable by taxpayer

A coupon is redeemable by the taxpayer if the terms of the coupon require the taxpayer to redeem the coupon when presented for redemption in accordance with its terms.

(c) Redemption costs; redemption period

For purposes of this section—

(1) Redemption costs

The term "redemption cost" means, with respect to any coupon—

(A) the lesser of—

(i) the amount of the discount provided by the terms of the coupon, or

(ii) the amount incurred by the taxpayer for paying such discount, plus

(B) the amount incurred by the taxpayer for a payment to the retailer (or other person redeeming the coupon from the person receiving the price discount), but only if the amount so payable is stated on the coupon.

(2) Redemption period

(A) In general

Except as provided in subparagraph (B), the redemption period for any taxable year is the 6-month period immediately following the close of the taxable year.

(B) Taxpayer may select shorter period

The taxpayer may select a redemption period which is shorter than 6 months.

(C) Change in redemption period

Any change in the redemption period shall be treated as a change in the method of accounting.

(d) Qualified discount coupons to which section applies

(1) Election of benefits

This section shall apply to qualified discount coupons if and only if the taxpayer makes an election under this section with respect to the trade or business in connection with which such coupons are issued. An election under this section may be made without the consent of the Secretary. The election shall be made in such manner as the Secretary may by regulations prescribe and shall be made for any taxable year not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof).

(2) Scope of election

An election made under this section shall apply to all qualified discount coupons issued in connection with the trade or business with respect to which the taxpayer has made the election.

(3) Period to which election applies

An election under this section shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(4) Treatment as method of accounting

Except to the extent inconsistent with the provisions of this section, for purposes of this subtitle, the computation of taxable income under an election made under this section shall be treated as a method of accounting.

(e) Suspense account

(1) In general

In the case of any election under this section which (but for this subsection) would result in a net decrease in taxable income under section 481(a)(2), in lieu of applying section 481, the taxpayer shall establish a suspense account for the trade or business for the taxable year for which the election is made.

(2) Initial opening balance

The initial opening balance of the account described in paragraph (1) for the first tax-

[1] So in original. Probably should be followed by a closing parenthesis.

able year to which the election applies shall be the amount by which—

(A) the largest dollar amount which would have been taken into account under subsection (a)(1) for any of the 3 immediately preceding taxable years if this section had applied to such 3 preceding taxable years, exceeds

(B) the sum of the increases in income (and the decreases in deductions) which (but for this subsection) would result under section 481(a)(2) for such first taxable years.

This subsection shall be applied by taking into account only amounts attributal[1] to the trade or business for which such account is established.

(3) Adjustments in suspense account

At the close of each taxable year, the suspense account shall be—

(A) reduced by the excess (if any) of—

(i) the opening balance of the suspense account for the taxable year, over

(ii) the amount deducted for the taxable year under subsection (a)(1), or

(B) increased (but not in excess of the initial opening balance) by the excess (if any) of—

(i) the amount deducted for the taxable year under subsection (a)(1), over

(ii) the opening balance of the suspense account for the taxable year.

(4) Income adjustments

(A) Reductions allowed as deduction

In the case of any reduction under paragraph (3)(A) in the account for the taxable year, an amount equal to such reduction shall be allowed as a deduction for such taxable year.

(B) Increases added to gross income

In the case of any increase under paragraph (3)(B) in the account for the taxable year, an amount equal to such increase shall be included in gross income for such taxable year.

If the amount described in paragraph (2)(A) exceeds the dollar amount which would have been taken into account under subsection (a)(1) for the taxable year preceding the first taxable year for which the election is effective if this section had applied to such preceding taxable year, then an amount equal to the amount of such excess shall be included in gross income for such first taxable year.

(5) Subchapter C transactions

The application of this subsection with respect to a taxpayer which is a party to any transaction with respect to which there is nonrecognition of gain or loss to any party to the transaction by reason of subchapter C shall be determined under regulations prescribed by the Secretary.

(f) 10-year spread of any net increase in taxable income under section 481(a)(2)

In the case of any election under this section which results in a net increase in taxable income under section 481(a)(2), under regulations prescribed by the Secretary, such net increase shall (except as otherwise provided in such regulations) be taken into account by the taxpayer in computing taxable income in each of the 10 taxable years beginning with the year for which the election is made.

(Added Pub. L. 95-600, title III, § 373(a), Nov. 6, 1978, 92 Stat. 2863.)

EFFECTIVE DATE

Section 373(c) of Pub. L. 95-600 provided that:

"(1) IN GENERAL.—The amendments made by subsections (a) [enacting this section] and (b) [amending analysis preceding section 461 of this title] shall apply to taxable years ending after December 31, 1978.

"(2) APPLICATION TO CERTAIN PRIOR TAXABLE YEARS.—

"(A) IN GENERAL.—If—

"(i) the taxpayer makes an election under section 466 of the Internal Revenue Code of 1954 for his first taxable year ending after December 31, 1978, and

"(ii) for a continuous period of 1 or more taxable years each of which ends on or before December 31, 1978, the taxpayer used the method of accounting with respect to any type of discount coupons which was reasonably similar to the method of accounting provided by section 1.451-4 of the Income Tax Regulations,

then the taxpayer may make an election under this paragraph to have the method of accounting which he used for such continuous period treated as a valid method of accounting with respect to each such type of discount coupons for such period for purposes of the Internal Revenue Code of 1954. A taxpayer may make an election under this paragraph with respect to only one such continuous period.

"(B) CERTAIN AMOUNTS TO WHICH METHOD OF ACCOUNTING APPLIES.—An accounting method which the taxpayer used for the period described in subparagraph (A) may include—

"(i) costs of the type permitted by section 1.451-4 of the Income Tax Regulations to be included in the estimated average cost of redeeming coupons, plus

"(ii) any amount designated or referred to on the coupon payable by the taxpayer to the person who allowed the discount on a sale by such person to the user of the coupon.

"(C) SUSPENSE ACCOUNT NOT REQUIRED IN CERTAIN CASES.—A taxpayer whose election under this paragraph applies to all types of discount coupons which he issued during the continuous period referred to in subparagraph (A)(ii) shall not be required to establish a suspense account under section 466(e) of the Internal Revenue Code of 1954.

"(D) RULES RELATING TO ELECTION UNDER THIS SUBSECTION.—An election under this paragraph may be made only before the expiration of the period for making an election under section 466 of the Internal Revenue Code of 1954 for the taxpayer's first taxable year ending after December 31, 1978. An election under this paragraph shall be made in such a manner and form as the Secretary of the Treasury or his delegate may by regulations prescribe. For purposes of the Internal Revenue Code of 1954, such an election shall be treated as a method of accounting, except that the approval of the Secretary of the Treasury or his delegate to the making of the election may not be required."

PART III—ADJUSTMENTS

§ 481. Adjustments required by changes in method of accounting

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 458, 463, 466, 1251 of this title; title 42 section 401.

[1] So in original. Probably should be "attributable".

Subchapter F—Exempt Organizations

PART I—GENERAL RULE

§ 501. Exemption from tax on corporations, certain trusts, etc.

[See main edition for text of (a) and (b)]

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

[See main edition for text of (1) to (11)]

(12) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses. In the case of any mutual or cooperative telephone company, the preceding sentence shall be applied without taking into account any income received or accrued from a nonmember telephone company for the performance of communication services which involve members of such mutual or cooperative telephone company.

[See main edition for text of (13) to (19)]

(20) an organization or trust created or organized in the United States, the exclusive function of which is to form part of a qualified group legal services plan or plans, within the meaning of section 120. An organization or trust which receives contributions because of section 120(c)(5)(C) shall not be prevented from qualifying as an organization described in this paragraph merely because it provides legal services or indemnification against the cost of legal services unassociated with a qualified group legal services plan.

(21) A trust or trusts established in writing, created or organized in the United States, and contributed to by any person (except an insurance company) if—

(A) the purpose of such trust or trusts is exclusively—

(i) to satisfy, in whole or in part, the liability of such person for, or with respect to, claims for compensation for disability or death due to pneumoconiosis under Black Lung Acts;

(ii) to pay premiums for insurance exclusively covering such liability; and

(iii) to pay administrative and other incidental expenses of such trust (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the trust and the processing of claims against such person under Black Lung Acts; and

(B) no part of the assets of the trust may be used for, or diverted to, any purpose other than—

(i) the purposes described in subparagraph (A), or

(ii) investment (but only to the extent that the trustee determines that a portion of the assets is not currently needed for the purposes described in subparagraph (A)) in—

(I) public debt securities of the United States,

(II) obligations of a State or local government which are not in default as to principal or interest, or

(III) time or demand deposits in a bank (as defined in section 581) or an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act, 12 U.S.C. 1752(6)) located in the United States, or

(iii) payment into the Black Lung Disability Trust Fund established under section 3 of the Black Lung Benefits Revenue Act of 1977, or into the general fund of the United States Treasury (other than in satisfaction of any tax or other civil or criminal liability of the person who established or contributed to the trust).

For purposes of this paragraph the term "Black Lung Acts" means part C of title IV of the Federal Coal Mine Health and Safety Act of 1969, and any State law providing compensation for disability or death due to pneumoconiosis.

[See main edition for text of (d) to (h)]

(i) Prohibition of discrimination by certain social clubs

Notwithstanding subsection (a), an organization which is described in subsection (c)(7) shall not be exempt from taxation under subsection (a) for any taxable year if, at any time during such taxable year, the charter, bylaws, or other governing instrument, of such organization or any written policy statement of such organization contains a provision which provides for discrimination against any person on the basis of race, color, or religion.

(j) Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

(As amended Feb. 10, 1978, Pub. L. 95-227, § 4(a), 92 Stat. 15; Aug. 15, 1978, Pub. L. 95-345, § 1(a), 92 Stat. 481; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(b)(2), (g)(2)(B), 92 Stat. 2939, 2940.)

REFERENCES IN TEXT

Section 3 of the Black Lung Benefits Revenue Act of 1977, referred to in subsec. (c)(21)(B)(iii), is section 3 of Pub. L. 95-227, Feb. 10, 1978, 92 Stat. 12, which is classified to section 934a of Title 30, Mineral Lands and Mining.

The Federal Coal Mine Health and Safety Act of 1969, referred to in subsec. (c)(21), is Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, which was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95-164, title I, § 101, Nov. 9, 1977, 91 Stat. 1290. Part C of title IV of the 1969 Act, as redesignated, which for purposes of subsec. (c)(21) of this section is to be construed as constituting the "Black Lung Acts", is classified generally to part C (§ 931 et seq.) of subchapter IV of chapter 22 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

AMENDMENTS

1978—Subsec. (c)(12). Pub. L. 95-345 added provisions relating to applicability of statutory provisions to mutual or cooperative telephone company of income received or accrued from a nonmember telephone company.

Subsec. (c)(20). Pub. L. 95-600, § 703(b)(2), substituted "this paragraph" for "section 501(c)(20)".

Subsec. (c)(21). Pub. L. 95-227 added subsec. (c)(21).

Subsec. (i). Pub. L. 95-600, § 703(g)(2)(B), redesignated former subsec. (g), which was inserted by section 2(a) of Pub. L. 94-568, as (i). Former subsec. (redesignated (j).

Subsec. (j). Pub. L. 95-600, § 703(g)(2)(A), redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date of 1978 Amendment note under section 192 of this title.

Section 1(b) of Pub. L. 95-345 provided that: "The amendment made by subsection (a) [amending subsec. (c)(12) of this section] shall apply to taxable years beginning after December 31, 1974".

Amendment of subsec. (c)(20), (h) by section 703(b)(2), (g)(2)(B) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 703(g)(2)(C) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [redesignating subsec. (g) as (i)] shall take effect on October 20, 1976, as if included in Public Law 94-568."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37, 51, 72, 101, 103, 104, 116, 117, 170, 192, 219, 246, 267, 274, 311, 318, 382, 401 to 405, 408 to 412, 414, 415, 447, 457, 502, 504, 507, 508, 509, 511, 512, 513, 514, 527, 542, 642, 681, 805, 821, 871, 992, 1504, 1563, 2039, 2055, 2517, 2522, 3121, 3303, 3306, 3401, 4041, 4221, 4251, 4253, 4294, 4421, 4911, 4940, 4941, 4942, 4945, 4947, 4948, 4951, 4952, 4953, 4975, 5214, 6033, 6043, 6047, 6072, 6104, 6110, 6420, 6421, 6424, 6427, 6501, 7428, 7454, 7609, 7802, 9012 of this title; title 5 sections 3102, 4111, 7342; title 12 section 1843; title 15 sections 77c, 1291; title 16 section 2708; title 18 sections 1511, 1955; title 20 sections 76m, 1681; title 29 sections 169, 303, 706, 795, 1002, 1051, 1052, 1081, 1086, 1321; title 30 section 934a; title 40 sections 483, 484; title 42 sections 300e-9, 409, 410, 1301, 1395x, 1760, 1784, 2000e, 2996b, 3056, 6371, 6372, 8143; title 50 section 790.

§ 503. Requirements for exemption

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 4975 of this title; title 29 section 1114; title 31 section 1524.

PART II—PRIVATE FOUNDATIONS

§ 507. Termination of private foundation status

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Pub. L. 95-170, § 3, Nov. 12, 1977, 91 Stat. 1352, provided that:

"In determining whether a person is a substantial contributor within the meaning of section 507(d)(2) of the Internal Revenue Code of 1954 for purposes of applying section 4941 of such Code (relating to taxes on self-dealing), contributions made before October 9, 1969, which—

"(1) were made on account of or in lieu of payments required under a lease in effect before such date, and

"(2) were coincident with or by reason of the reduction in the required payments under such lease, shall not be taken into account. For purposes of applying section 507(d)(2)(B)(iv) of such Code, the preceding sentence shall be treated as having taken effect on January 1, 1970."

§ 509. Private foundation defined

[See main edition for text of (a) to (d)]

(e) Definition of gross investment income

For purposes of subsection (d), the term "gross investment income" means the gross amount of income from interest, dividends, payments with respect to securities loans (as defined in section 512(a)(5)), rents, and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

(As amended Pub. L. 95-345, § 2(a)(1), Aug. 15, 1978, 92 Stat. 481.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-345 added provisions relating to payments with respect to securities loans.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(e) of Pub. L. 95-345 provided that:

"The amendments made by this section [enacting section 1058 of this title and amending sections 509, 512, 514, 851, and 4940 of this title] apply with respect to—

"(1) amounts received after December 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of the Internal Revenue Code of 1954), and

"(2) transfers of securities, under agreements described in section 1058 of such Code, occurring after such date."

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

§ 511. Imposition of tax on unrelated business income of charitable, etc., organizations

(a) Charitable, etc., organizations taxable at corporation rates

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income (as defined in section 512) of every organization described in paragraph (2) a tax computed as provided in section 11. In making such computation for purposes of this section, the term "taxable income" as used in section 11 shall be read as "unrelated business taxable income".

(2) Organizations subject to tax

(A) Organizations described in sections 401(a) and 501(c)

The tax imposed by paragraph (1) shall apply in the case of any organization (other than a trust described in subsection (b) or an organization described in section 501(c)(1)) which is exempt, except as provided in this part or part II (relating to private foundations), from taxation under this subtitle by reason of section 501(a).

(B) State colleges and universities

The tax imposed by paragraph (1) shall apply in the case of any college or university which is an agency or instrumentality of any government or any political subdivision thereof, or which is owned or operated by a government or any political subdivision thereof, or by any agency or instrumentality of one or more governments or political subdivisions. Such tax shall also apply in the case of any corporation wholly owned by one or more such colleges or universities.

(b) Tax on charitable, etc., trusts

(1) Imposition of tax

There is hereby imposed for each taxable year on the unrelated business taxable income of every trust described in paragraph (2) a tax computed as provided in section 1(e). In making such computation for purposes of this section, the term "taxable income" as used in section 1 shall be read as "unrelated business taxable income" as defined in section 512.

[See main edition for text of (2); (c)]

(d) Tax preferences

(1) Organizations taxable at corporate rates

If an organization is subject to tax on unrelated business taxable income pursuant to subsection (a), the tax imposed by section 56 shall apply to such organizations with respect to items of tax preference which enter into the computation of unrelated business taxable income in the same manner as section 56 applies to corporations.

(2) Organizations taxable as trusts

If an organization is subject to tax on unrelated business taxable income pursuant to subsection (b), the taxes imposed by section 55 and section 56 (as the case may be) shall apply to such organization with respect to items of tax preference which enter into the computation of unrelated business taxable income.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(6), 91 Stat. 133; Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(5), title IV, § 421(e)(3), 92 Stat. 2821, 2876.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 301(b)(5)(A), substituted "a tax" for "a normal tax and a surtax".

Subsec. (a)(2). Pub. L. 95-600, § 301(b)(5)(B), substituted "tax" for "taxes" wherever appearing.

Subsec. (d). Pub. L. 95-600, § 421(e)(3), substituted provisions relating to organizations taxable at corporate rates and organizations taxable as trusts, for provisions relating to imposition of the tax imposed by section 56 of this title to an organization subject to tax under this section for tax preferences computed in unrelated business taxable income.

1977—Subsec. (b)(1). Pub. L. 95-30 substituted "section 1(e)" for "section 1(d)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(1), (2) of this section by section 301(b)(5)(A), (B) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Amendment of subsec. (d) by section 421(e)(3) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 512. Unrelated business taxable income

(a) Definition

For purposes of this title—

[See main edition for text of (1) to (4)]

(5) Definition of payments with respect to securities loans

(A) The term "payments with respect to securities loans" includes all amounts received in respect of a security (as defined in section 1236(c)) transferred by the owner to another person in a transaction to which section 1058 applies (whether or not title to the security remains in the name of the lender) including—

(i) amounts in respect of dividends, interest, or other distributions,

(ii) fees computed by reference to the period beginning with the transfer of securities by the owner and ending with the transfer of identical securities back to the transferor by the transferee and the fair market value of the security during such period,

(iii) income from collateral security for such loan, and

(iv) income from the investment of collateral security.

(B) Subparagraph (A) shall apply only with respect to securities transferred pursuant to an agreement between the transferor and the transferee which provides for—

(i) reasonable procedures to implement the obligation of the transferee to furnish to the transferor, for each business day during such period, collateral with a fair market value not less than the fair market value of the security at the close of business on the preceding business day,

(ii) termination of the loan by the transferor upon notice of not more than 5 business days, and

(iii) return to the transferor of securities identical to the transferred securities upon termination of the loan.

(b) Modifications

The modifications referred to in subsection (a) are the following:

(1) There shall be excluded all dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and annuities, and all deductions directly connected with such income.

[See main edition for text of (2) to (15); (c)]

(As amended Aug. 15, 1978, Pub. L. 95-345, § 2(a)(2), (b), 92 Stat. 481.)

AMENDMENTS

1978—Subsec. (a)(5). Pub. L. 95-345, § 2(b), added subsec. (a)(5).

Subsec. (b)(1). Pub. L. 95-345, § 2(a)(2), added provisions relating to payments with respect to securities loans.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in subsec. (a)(5) of this section), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 502, 509, 511, 513, 514, 664, 681, 851, 1443, 4943, 4940 of this title.

§ 513. Unrelated trade or business

[See main edition for text of (a) to (e)]

(f) Certain bingo games

(1) In general

The term "unrelated trade or business" does not include any trade or business which consists of conducting bingo games.

(2) Bingo game defined

For purposes of paragraph (1), the term "bingo game" means any game of bingo—

(A) of a type in which usually—

(i) the wagers are placed,

(ii) the winners are determined, and

(iii) the distribution of prizes or other property is made,

in the presence of all persons placing wagers in such game,

(B) the conducting of which is not an activity ordinarily carried out on a commercial basis, and

(C) the conducting of which does not violate any State or local law.

(As amended Oct. 21, 1978, Pub. L. 95-502, title III, § 301(a), 92 Stat. 1702.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-502 added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 301(b) of Pub. L. 95-502 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1969."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 414, 509, 512, 514, 527, 1245, 1250, 4942 of this title; title 16 section 2708; title 29 section 1002.

§ 514. Unrelated debt-financed income

[See main edition for text of (a) and (b)]

(c) Acquisition indebtedness

[See main edition for text of (1) to (7)]

(8) Securities subject to loans

For purposes of this section—

(A) payments with respect to securities loans (as defined in section 512(a)(5)) shall be deemed to be derived from the securities loaned and not from collateral security or the investment of collateral security from such loans,

(B) any deductions which are directly connected with collateral security for such loan, or with the investment of collateral security, shall be deemed to be deductions which are directly connected with the securities loaned, and

(C) an obligation to return collateral security shall not be treated as acquisition indebtedness (as defined in paragraph (1)).

[See main edition for text of (d) to (f)]

(As amended Aug. 15, 1978, Pub. L. 95-345, § 2(c), 92 Stat. 482.)

AMENDMENTS

1978—Subsec. (c)(8). Pub. L. 95-345 added subsec. (c)(8).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

PART IV—FARMERS' COOPERATIVES

§ 521. Exemptions of farmers' cooperatives from tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 52, 116, 246, 1245, 1250, 1251, 1381, 3306, 4421, 6044 of this title; title 15 section 77c.

PART VI—POLITICAL ORGANIZATIONS

§ 527. Political organizations

[See main edition for text of (a)]

(b) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the political organization taxable income of every political organization. Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b).

[See main edition for text of (2)]

(c) Political organization taxable income defined

[See main edition for text of (1) and (2)]

(3) Exempt function income

For purposes of this subsection, the term "exempt function income" means any amount received as—

(A) a contribution of money or other property,

(B) membership dues, a membership fee or assessment from a member of the political organization,

(C) proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials,

which are not received in the ordinary course of any trade or business, or

(D) proceeds from the conducting of any bingo game (as defined in section 513(f)(2)),

to the extent such amount is segregated for use only for the exempt function of the political organization.

[*See main edition for text of (d) to (g)*]

(As amended Pub. L. 95-502, title III, § 302(a), Oct. 21, 1978, 92 Stat. 1702; Pub. L. 95-600, title III, § 301(b)(6), Nov. 6, 1978, 92 Stat. 2821.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600 substituted "Such tax shall be computed by multiplying the political organization taxable income by the highest rate of tax specified in section 11(b)" for "Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the political organization were a corporation and as though the political organization taxable income were the taxable income referred to in section 11" and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (c)(3)(D). Pub. L. 95-502 added subpar. (D).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) by section 301(b)(6) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION CAMPAIGN CONTRIBUTIONS; COLLATERAL

Section 302(b) of Pub. L. 95-502 provided that:

"(1) The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1974, except that notwithstanding any other provision of law to the contrary, no amounts held at the date of enactment of this bill [Oct. 21, 1978] by an organization described in section 527(e)(1) of the Internal Revenue Code of 1954 in escrow, in separate accounts for the payment of Federal taxes, or in any other fund which are proceeds described in section 527(c)(3)(D) of such Code may be used, directly or indirectly, to make a contribution or expenditure (as defined in section 301 (e) and (f) of the Federal Election Campaign Act of 1971; 2 U.S.C. 431(f)) in connection with any election held before January 1, 1979.

"(2) Such amounts as described in (1) above shall not be considered as security or collateral for any loan by any State or national bank or any other person or organization."

PART VII—CERTAIN HOMEOWNERS ASSOCIATIONS

§ 528. Certain homeowners associations

[*See main edition for text of (a)*]

(b) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the homeowners association taxable income of every homeowners association. Such tax shall be computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b).

(2) Alternative tax in case of capital gains

If for any taxable year any homeowners association has a net capital gain, then in lieu of the tax imposed by paragraph (1), there is hereby imposed a tax (if such tax is less that [1] the tax imposed by paragraph (1)) which shall consist of the sum of—

[*See main edition for text of (A)*]

(B) an amount determined as provided in section 1201(a) on such gain.

(c) Homeowners association defined

For purposes of this section—

[*See main edition for text of (1)*]

(2) Condominium management association

The term "condominium management association" means any organization meeting the requirement of subparagraph (A) of paragraph (1) with respect to a condominium project substantially all of the units of which are used by individuals for residences.

[*See main edition for text of (3) and (4); (d)*]

(As amended Pub. L. 95-600, title III, § 301(b)(7), title IV, § 403(c)(2), title VII, § 701(n)(1), Nov. 6, 1978, 92 Stat. 2821, 2868, 2907.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 301(b)(7), substituted "Such tax shall be computed by multiplying the homeowners association taxable income by the highest rate of tax specified in section 11(b)" for "Such tax shall consist of a normal tax and a surtax computed as provided in section 11 as though the homeowners association were a corporation and as though the homeowners association taxable income were the taxable income referred to in section 11" and struck out provision that for purposes of this subsection, the surtax exemption provided by section 11(d) not be allowed.

Subsec. (b)(2)(B). Pub. L. 95-600, § 403(c)(2), substituted provision related to amount being determined according to section 1201(a) for provision requiring an amount of 30 percent.

Subsec. (c)(2). Pub. L. 95-600, § 701(n)(1), substituted "by individuals for residences" for "as residences".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) of this section by section 301(b)(7) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Section 403(d)(3) of Pub. L. 95-600 provided that: "The amendments made by paragraphs (2), (3), and (4) of subsection (c) [amending subsec. (b)(2)(B) of this section and sections 857(b)(3)(A)(ii) and 904(b)(3)(D), (E) of this title] shall take effect on the date of the enactment of this Act [Nov. 6, 1978]."

Section 701(n)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending subsec. (c)(2) of this section] shall apply to taxable years beginning after December 31, 1973."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44C, 6012 of this title.

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[1] So in original. Probably should read "than".

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

§ 531. Imposition of accumulated earnings tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 46, 50A, 53, 56, 111, 532, 534, 535, 536, 545, 556, 563, 901 of this title; title 46 section 1177.

§ 537. Reasonable needs of the business

[*See main edition for text of (a)*]

(b) Special rules

For purposes of subsection (a)—

[*See main edition for text of (1) to (3)*]

(4) Product liability loss reserves

The accumulation of reasonable amounts for the payment of reasonably anticipated product liability losses (as defined in section 172(i)), as determined under regulations prescribed by the Secretary, shall be treated as accumulated for the reasonably anticipated needs of the business.

(5) No inference as to prior taxable years

The application of this part to any taxable year before the first taxable year specified in paragraph (1) shall be made without regard to the fact that distributions in redemption coming within the terms of such paragraphs were subsequently made.

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 371(c), 92 Stat. 2859.)

AMENDMENTS

1978—Subsec. (b)(4). Pub. L. 95-600 added subsec. (b)(4). Former subsec. (b)(4) redesignated (b)(5).

Subsec. (b)(5). Pub. L. 95-600 redesignated former subsec. (b)(4) as (b)(5).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(4) by section 371(c) of Pub. L. 95-600 applicable with respect to taxable years beginning after Sept. 30, 1979, see section 371(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 172 of this title.

PART II—PERSONAL HOLDING COMPANIES

§ 541. Imposition of personal holding company tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 50A, 53, 56, 111, 535, 545, 546, 547, 556, 563, 882, 901, 992, 6683 of this title.

§ 542. Definition of personal holding company

STOCK OWNERSHIP REQUIREMENT; ORGANIZATION OR TRUST ORGANIZED OR CREATED BEFORE JULY 1, 1950

Pub. L. 95-600, title VII, § 701(o), Nov. 6, 1978, 92 Stat. 2907, provided that:

"(1) In General.—The last sentence of section 542(a)(2) of the Internal Revenue Code of 1954 (relating to stock ownership requirement) shall not apply in the case of an organization or trust organized or created before July 1, 1950, if at all times on or after July 1, 1950, and before the close of the taxable year such organization or trust has owned all of the common stock and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

"(2) Effective Date.—The provisions of paragraph (1) shall apply with respect to taxable years beginning after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 280, 316, 465, 532, 541, 544, 545, 562, 851, 856, 864, 992, 1504 of this title; title 43 section 1620.

§ 543. Personal holding company income

(a) General rule

For purposes of this subtitle, the term "personal holding company income" means the portion of the adjusted ordinary gross income which consists of:

[*See main edition for text of (1) to (3)*]

(4) Copyright royalties

Copyright royalties; except that copyright royalties shall not be included if—

[*See main edition for text of (A) to (C)*]

For purposes of this subsection, the term "copyright royalties" means compensation, however designated, for the use of, or the right to use, copyrights in works protected by copyright issued under title 17 of the United States Code and to which copyright protection is also extended by the laws of any country other than the United States of America by virtue of any international treaty, convention, or agreement, or interests in any such copyrighted works, and includes payments from any person for performing rights in any such copyrighted work and payments (other than produced film rents as defined in paragraph (5)(B)) received for the use of, or right to use, films. For purposes of this paragraph, the term "shareholder" shall include any person who owns stock within the meaning of section 544.

[*See main edition for text of (5) to (8); (b) and (c)*]

(As amended Oct. 19, 1976, Pub. L. 94-553, § 105(d), 90 Stat. 2599.)

AMENDMENTS

1976—Subsec. (a)(4). Pub. L. 94-553 struck out "(other than by reason of section 2 or 6 thereof)" following "title 17 of the United States Code".

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-553 to subsec. (a)(4) effective Jan. 1, 1978, see section 102 of Pub. L. 94-553 set out as an Effective Date note preceding section 101 of Title 17, Copyrights.

§ 544. Rules for determining stock ownership

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 341, 465, 542, 543, 6035, 6501 of this title.

PART III—FOREIGN PERSONAL HOLDING COMPANIES

§ 552. Definition of foreign personal holding company

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 171, 189, 280, 532, 542, 551, 553, 554, 555, 562, 1212, 6035, 6103 of this title.

PART IV—DEDUCTION FOR DIVIDENDS PAID

§ 561. Definition of deduction for dividends paid

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 545, 547, 556, 564, 565, 852, 857, 860, 4981 of this title.

Subchapter H—Banking Institutions

PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

§ 581. Definition of bank

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 271, 279, 401, 501, 542, 585, 586, 593, 992, 6032, 6323, 6695, 7512, 7609 of this title.

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions

[See main edition for text of (a) and (b)]

(c) Bond, etc., losses and gains of financial institutions

[See main edition for text of (1)]

(2) Transitional rule for banks

In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 1 year to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).

[See main edition for text of (3) and (4)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (c)(2). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (c)(2) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 584. Common trust funds

[See main edition for text of (a) and (b)]

(c) Income of participants in fund

(1) Inclusions in taxable income

Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(A) as part of its gains and losses from sales or exchanges of capital assets held for not more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 1 year;

(B) as part of its gains and losses from sales or exchanges of capital assets held for more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 1 year;

(C) its proportionate share of the ordinary taxable income or the ordinary net loss of the common trust fund, computed as provided in subsection (d).

[See main edition for text of (2)]

(d) Computation of common trust fund income

The taxable income of a common trust fund shall be computed in the same manner and on the same basis as in the case of an individual, except that—

(1) there shall be segregated the gains and losses from sales or exchanges of capital assets;

(2) after excluding all items of gain and loss from sales or exchanges of capital assets, there shall be computed—

(A) an ordinary taxable income which shall consist of the excess of the gross income over deductions; or

(B) an ordinary net loss which shall consist of the excess of the deductions over the gross income; and

(3) the deduction provided by section 170 (relating to charitable, etc., contributions and gifts) shall not be allowed.

[(4) Repealed. Pub. L. 95-30, title I, § 101(d)(7)(C), May 23, 1977, 91 Stat. 133.]

[See main edition for text of (e) to (g)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732; May 23, 1977, Pub. L. 95-30, title I, § 101(d)(7), 91 Stat. 133.)

AMENDMENTS

1977—Subsec. (d)(4). Pub. L. 95-30 struck out subsec. (d)(4) relating to the standard deduction.

1976—Subsec. (c)(1)(A), (B). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year" wherever appearing.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (c)(1)(A), (B) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

PART II—MUTUAL SAVINGS BANKS, ETC.

§ 593. Reserves for losses on loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 50B, 52, 57, 166, 172, 582, 585, 595, 596, 992, 1038 of this title.

Subchapter I—Natural Resources

PART I—DEDUCTIONS

§ 613. Percentage depletion

[*See main edition for text of* (a) *and* (b)]

(c) Definition of gross income from property

For purposes of this section—

(1) Gross income from the property

The term "gross income from the property" means, in the case of a property other than an oil or gas well and other than a geothermal deposit, the gross income from mining.

[*See main edition for text of* (2) *to* (5); (d)]

(e) Percentage depletion for geothermal deposits

(1) In general

In the case of geothermal deposits located in the United States or in a possession of the United States, for purposes of subsection (a)—

(A) such deposits shall be treated as listed in subsection (b), and

(B) the applicable percentage (determined under the table contained in paragraph (2)) shall be deemed to be the percentage specified in subsection (b).

(2) Applicable percentage

For purposes of paragraph (1)—

In the case of taxable years beginning in calendar year—	The applicable percentage is—
1978, 1979, or 1980	22
1981	20
1982	18
1983	16
1984 and thereafter	15

(3) Geothermal deposit defined

For purposes of paragraph (1), the term "geothermal deposit" means a geothermal reservoir consisting of natural heat which is stored in rocks or in an aqueous liquid or vapor (whether or not under pressure). Such a deposit shall in no case be treated as a gas well for purposes of this section or section 613A, and this section shall not apply to a geothermal deposit which is located outside the United States or its possessions.

(As amended Nov. 9, 1978, Pub. L. 95-618, title IV, § 403(a)(1), (2)(A), 92 Stat. 3203.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95-618, § 403(a)(2)(A), inserted "and other than a geothermal deposit" following "oil or gas well".

Subsec. (e). Pub. L. 95-618, § 403(a)(1), added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 403(c) of Pub. L. 95-618 provided that: "The amendments made by this section [amending this section and sections 613A and 614 of this title] shall take effect on October 1, 1978, and shall apply to taxable years ending on or after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44C, 48, 57, 163, 263, 381, 465, 611, 613A, 614, 617, 631, 636, 901, 903, 1082, 4940 of this title.

§ 613A. Limitations on percentage depletion in case of oil and gas wells

[*See main edition for text of* (a)]

(b) Exemption for certain domestic gas wells

(1) In general

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to—

(A) regulated natural gas, and

(B) natural gas sold under a fixed contract,

and 22 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of that section.

(2) Natural gas from geopressured brine

The allowance for depletion under section 611 shall be computed in accordance with section 613 with respect to any qualified natural gas from geopressured brine, and 10 percent shall be deemed to be specified in subsection (b) of section 613 for purposes of subsection (a) of such section.

(3) Definitions

For purposes of this subsection—

(A) Natural gas sold under a fixed contract

The term "natural gas sold under a fixed contract" means domestic natural gas sold by the producer under a contract, in effect on February 1, 1975, and at all times thereafter before such sale, under which the price for such gas cannot be adjusted to reflect to any extent the increase in liabilities of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates to the contrary by clear and convincing evidence.

(B) Regulated natural gas

The term "regulated natural gas" means domestic natural gas produced and sold by the producer, before July 1, 1976, subject to the jurisdiction of the Federal Power Commission, the price for which has not been adjusted to reflect to any extent the increase in liability of the seller for tax under this chapter by reason of the repeal of percentage depletion for gas. Price increases

after February 1, 1975, shall be presumed to take increases in tax liabilities into account unless the taxpayer demonstrates the contrary by clear and convincing evidence.

(C) Qualified natural gas from geopressured brine

The term "qualified natural gas from geopressured brine" means any natural gas—

(i) which is determined in accordance with section 503 of the Natural Gas Policy Act of 1978 to be produced from geopressured brine, and

(ii) which is produced from any well the drilling of which began after September 30, 1978, and before January 1, 1984.

[See main edition for text of (c)]

(d) Limitations on application of subsection (c)

(1) Limitation based on taxable income

The deduction for the taxable year attributable to the application of subsection (c) shall not exceed 65 percent of the taxpayer's taxable income (reduced in the case of an individual by the zero bracket amount) for the year computed without regard to—

[See main edition for text of (A) to (D)]

If an amount is disallowed as a deduction for the taxable year by reason of application of the preceding sentence, the disallowed amount shall be treated as an amount allowable as a deduction under subsection (c) for the following taxable year, subject to the application of the preceding sentence to such taxable year. For purposes of basis adjustments and determining whether cost depletion exceeds percentage depletion with respect to the production from a property, any amount disallowed as a deduction on the application of this paragraph shall be allocated to the respective properties from which the oil or gas was produced in proportion to the percentage depletion otherwise allowable to such properties under subsection (c).

[See main edition for text of (2) to (4); (e)]

(As amended Pub. L. 95-30, title I, § 102(b)(7), May 23, 1977, 91 Stat. 138; Pub. L. 95-618, title IV, § 403(a)(2)(B), (b), Nov. 9, 1978, 92 Stat. 3204.)

REFERENCES IN TEXT

Section 503 of the Natural Gas Policy Act of 1978, referred to in subsec. (b)(3)(C)(i), is section 503 of Pub. L. 95-621, title V, Nov. 9, 1978, 92 Stat. 3397, which is classified to section 3413 of Title 15, Commerce and Trade.

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-618, § 403(a)(2)(B), struck out subpar. (C), which related to a computation in accordance with section 613 with respect to any geothermal deposit in the United States or in a possession of the United States which is determined to be a gas well.

Subsec. (b)(2). Pub. L. 95-618, § 403(b)(1), added subsec. (b)(2). Former subsec. (b)(2) redesignated (b)(3).

Subsec. (b)(3). Pub. L. 95-618, § 403(b)(1), (2), redesignated former subsec. (b)(2) as (b)(3) and, as so redesignated, added subpar. (C).

1977—Subsec. (d)(1). Pub. L. 95-30 inserted "(reduced in the case of an individual by the zero bracket amount)" following "the taxpayer's taxable income" in the provisions preceding subpar. (A).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 effective on Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 613 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

COORDINATION WITH OTHER PROVISION

Section 403(d) of Pub. L. 95-618 provided that: "Any allowance for depletion allowed by reason of the amendments made by subsection (b) [amending subsec. (b)(2) and (3) of this section] shall not be treated as a credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax which is specifically allowable with respect to any high-cost natural gas (or category thereof) for purposes of section 107(d) of the Natural Gas Policy Act of 1978 [section 3317(d) of Title 15, Commerce and Trade]."

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 613, 993 of this title.

§ 614. Definition of property

[See main edition for text of (a)]

(b) Special rules as to operating mineral interests in oil and gas wells or geothermal deposits

In the case of oil and gas wells or geothermal deposits—

[See main edition for text of (1) to (5)]

(c) Special rules as to operating mineral interests in mines

(1) Election to aggregate separate interests

Except in the case of oil and gas wells and geothermal deposits, if a taxpayer owns two or more separate operating mineral interests which constitute part or all of an operating unit, he may elect (for all purposes of this subtitle)—

[See main edition for text of (A) and (B) and concluding par.]

(2) Election to treat a single interest as more than one property

Except in the case of oil and gas wells and geothermal deposits, if a single tract or parcel of land contains a mineral deposit which is being extracted, or will be extracted by means of two or more mines for which expenditures for development or operation have been made

by the taxpayer, then the taxpayer may elect to allocate to such mines, under regulations prescribed by the Secretary, all of the tract or parcel of land and of the mineral deposit contained therein, and to treat as a separate property that portion of the tract or parcel of land and of the mineral deposit so allocated to each mine. A separate property formed pursuant to an election under this paragraph shall be treated as a separate property for all purposes of this subtitle (including this paragraph). A separate property so formed may, under regulations prescribed by the Secretary, be included as a part of an aggregation in accordance with paragraphs (1) and (3). The election provided by this paragraph may not be made with respect to any property which is a part of an aggregation formed by the taxpayer under paragraph (1) except with the consent of the Secretary.

[*See main edition for text of (3), (d) and (e)*]

(As amended Nov. 9, 1978, Pub. L. 95-618, title IV, § 403(a)(2)(C), (D), 92 Stat. 3204.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-618, § 403(a)(2)(C), in subsec. heading and provisions preceding par. (1) inserted "or geothermal deposits" following "gas wells".

Subsec. (c). Pub. L. 95-618, § 403(a)(2)(D), substituted "oil and gas wells and geothermal deposits" for "oil and gas wells" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 effective on Oct. 1, 1978, and applicable to taxable years ending on or after such date, see section 403(c) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 613 of this title.

§ 617. Deduction and recapture of certain mining exploration expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 243, 381, 453, 703, 751 of this title.

PART III—SALES AND EXCHANGES

§ 631. Gain or loss in the case of timber, coal, or domestic iron ore

(a) Election to consider cutting as sale or exchange

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 1 year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of timber with a retained economic interest

In the case of the disposal of timber held for more than 1 year before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of coal or domestic iron ore with a retained economic interest

In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 1 year before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. Such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a coadventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions al-

lowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore—

(1) to a person whose relationship to the person disposing of such iron ore would result in the disallowance of losses under section 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore.

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732.)

AMENDMENTS

1976—Subsecs. (a), (b), (c). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsecs. (a), (b), and (c) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

PART V—CONTINENTAL SHELF AREAS

§ 638. Continental shelf areas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 913, 1441, 4121 of this title.

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

SUBPART A—GENERAL RULES FOR TAXATION OF ESTATES AND TRUSTS

§ 641. Imposition of tax

(a) Application of tax

The tax imposed by section 1(e) shall apply to the taxable income of estates or of any kind of property held in trust, including—

[See main edition for text of (1) to (4); (b) and (c)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(8), 91 Stat. 134.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-30 substituted "section 1(e)" for "section 1(d)" in the provisions preceding par. (1).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 642. Special rules for credits and deductions

[See main edition for text of (a) and (b)]

(c) Deduction for amounts paid or permanently set aside for a charitable purpose

[See main edition for text of (1) and (2)]

(3) Pooled income funds

In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 1 year, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

(4) Adjustments

To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 1 year, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).

[See main edition for text of (5) and (6); (d) to (h)]

(i) Certain distributions by cemetery perpetual care funds

In the case of a cemetery perpetual care fund which—

(1) was created pursuant to local law by a taxable cemetery corporation for the care and maintenance of cemetery property, and

(2) is treated for the taxable year as a trust for purposes of this subchapter,

any amount distributed by such fund for the care and maintenance of gravesites which have been purchased from the cemetery corporation before the beginning of the taxable year of the trust and with respect to which there is an obligation to furnish care and maintenance shall be considered to be a distribution solely for purposes of sections 651 and 661, but only to the extent that the aggregate amount so distributed during the taxable year does not exceed $5 multiplied by the aggregate number of such gravesites.

(j) Cross reference

For special rule for determining the time of receipt of dividends by a beneficiary under section 652 or 662, see section 116(c)(3).

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732; May 23, 1977, Pub. L. 95-30, title I, § 101(d)(9), 91 Stat. 134; Nov. 6, 1978, Pub. L. 95-600, title I, § 113(a)(2)(B), 92 Stat. 2778.)

AMENDMENTS

1978—Subsec. (i). Pub. L. 95-600 redesignated former subsec. (j) as (i). Former subsec. (i), which did not allow estates or trusts the deduction for contributions

to candidates for public office provided by section 218, was struck out.

Subsec. (j). Pub. L. 95-600 redesignated former subsec. (k) as (j). Former subsec. (j) redesignated as (i).

Subsec. (k). Pub. L. 95-600 redesignated subsec. (k) as (j).

1977—Subsec. (k). Pub. L. 95-30 struck out par. (1) which made a cross reference to section 142(b)(4) for disallowance of the standard deduction in the case of estates and trusts and struck out "(2)" at the beginning of the single remaining cross reference.

1976—Subsec. (c)(3), (4). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of section effective with respect to contributions the payment of which is made after Dec. 31, 1978, in taxable years beginning after such date, see section 113(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 41 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (c)(3), (4) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 153, 170, 507, 508, 542, 643, 644, 651, 661, 662, 663, 681, 683, 901, 904, 2055, 2522, 4947, 4948, 6034 of this title.

§ 644. Special rule for gain on property transferred to trust at less than fair market value

(a) Imposition of tax

(1) In general

If—

[See main edition for text of (A) and (B)]

there is hereby imposed a tax determined in accordance with paragraph (2) on the includible gain recognized on such sale or exchange.

(2) Amount of tax

The amount of the tax imposed by paragraph (1) on any includible gain recognized on the sale or exchange of any property shall be equal to the sum of—

(A) the excess of—

(i) the tax which would have been imposed under this chapter for the taxable year of the transferor in which the sale or exchange of such property occurs had the amount of the includible gain recognized on such sale or exchange, reduced by any deductions properly allocable to such gain, been included in the gross income of the transferor for such taxable year, over

(ii) the tax actually imposed under this chapter for such taxable year on the transferor, plus

[See main edition for text of (B)]

The determination of tax under clause (i) of subparagraph (A) shall be made by not taking into account any carryback, and by not taking into account any loss or deduction to the extent that such loss or deduction may be carried by the transferor to any other taxable year.

[See main edition for text of (3) and (4)]

(b) Definition of includible gain

For purposes of this section, the term "includible gain" means the lesser of—

(1) the gain recognized by the trust on the sale or exchange of any property, or

[See main edition for text of (2); (c)]

(d) Special rules

(1) Short sales

If the trust sells the property referred to in subsection (a) in a short sale within the 2-year period referred to in such subsection, such 2-year period shall be extended to the date of the closing of such short sale.

(2) Substituted basis property

For purposes of this section, in the case of any property held by the trust which has a basis determined in whole or in part by reference to the basis of any other property which was transferred to the trust—

(A) the initial transfer of such property in trust by the transferor shall be treated as having occurred on the date of the initial transfer in trust of such other property,

(B) subsections (a)(1)(B) and (b)(2) shall be applied by taking into account the fair market value and the adjusted basis of such other property, and

(C) the amount determined under subsection (b)(2) with respect to such other property shall be allocated (under regulations prescribed by the Secretary) among such other property and all properties held by the trust which have a basis determined in whole or in part by reference to the basis of such other property.

[See main edition for text of (e)]

(f) Special rule for installment sales

If the trust elects to report income under section 453 on any sale or exchange to which subsection (a) applies, under regulations prescribed by the Secretary—

(1) subsection (a) (other than the 2-year requirement of paragraph (1)(A) thereof) shall be applied as if each installment were a separate sale or exchange of property to which such subsection applies, and

[See main edition for text of (2)]

(As amended Pub. L. 95-600, title VII, § 701(p)(1)-(3), Nov. 6, 1978, 92 Stat. 2908.)

CODIFICATION

Section 1402(b)(1)(K) of Pub. L. 94-455, which directed an amendment of this section that could not be executed to the text since it purported to amend provisions of this section which were not enacted, was repealed by section 701(p)(4) of Pub. L. 95-600, Nov. 6, 1978, 92 Stat. 2909

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 701(p)(1)(A), substituted "gain recognized" for "gain realized".

Subsec. (a)(2). Pub. L. 95-600, § 701(p)(1)(A), (2), substituted in introductory text and subpar. (A)(i) "gain recognized" for "gain realized" and provided that the determination of tax under cl. (i) of subpar. (A) shall be made by not taking into account any carryback, and by not taking into account any loss or deduction to the extent that such loss or deduction may be carried by the transferor to any other taxable year.

Subsec. (b)(1). Pub. L. 95-600, § 701(p)(1)(A), substituted "gain recognized" for "gain realized".

Subsec. (d). Pub. L. 95-600, § 701(p)(1)(B), substituted the heading "Special rules" for "Special rule for short sales", designated existing provisions as par. (1) with "Short sales" heading and added par. (2).

Subsec. (f)(1). Pub. L. 95-600, § 701(p)(3), inserted "(other than the 2-year requirement of paragraph (1)(A) thereof)" following "subsection (a)".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(p)(5) of Pub. L. 95-600 provided that:

"(A) Except as provided in subparagraph (B), the amendment made by this subsection [amending subsecs. (a)(1), (2), (b)(1), (d), and (f)(1) of this section] shall apply to transfers in trust made after May 21, 1976.

"(B) The amendment made by paragraph (4) [repealing section 1402(b)(1)(K) of Pub. L. 94-455] shall take effect on October 4, 1976."

SUBPART D—TREATMENT OF EXCESS DISTRIBUTIONS BY TRUSTS

§ 665. Definitions applicable to subpart D

[See main edition for text of (a) to (c)]

(d) Taxes imposed on the trust

For purposes of this subpart—

(1) In general

The term "taxes imposed on the trust" means the amount of the taxes which are imposed for any taxable year of the trust under this chapter (without regard to this subpart or subpart A of part IV of subchapter A) and which, under regulations prescribed by the Secretary, are properly allocable to the undistributed portions of distributable net income and gains in excess of losses from sales or exchanges of capital assets. The amount determined in the preceding sentence shall be reduced by any amount of such taxes deemed distributed under section 666(b) and (c) or 669(d) and (e) to any beneficiary.

(2) Foreign trusts

In the case of any foreign trust, the term "taxes imposed on the trust" includes the amount, reduced as provided in the last sentence of paragraph (1), of any income, war profits, and excess profits taxes imposed by any foreign country or possession of the United States on such foreign trust which, as determined under paragraph (1), are so properly allocable.

[See main edition for text of (e)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(q)(1)(A), 92 Stat. 2909.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-600 designated existing provisions as par. (1), and in par. (1) as so designated, defined the term "taxes imposed on the trust" to mean imposition of taxes without regard to subpart A of part IV of subchapter (A), and added par. (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(q)(3)(A) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending subsec. (b) of this section and section 667 of this title] shall apply to distributions made in taxable years beginning after December 31, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 667 of this title.

§ 666. Accumulation distribution allocated to preceding years

[See main edition for text of (a)]

(b) Total taxes deemed distributed

If any portion of an accumulation distribution for any taxable year is deemed under subsection (a) to be an amount within the meaning of paragraph (2) of section 661(a) distributed on the last day of any preceding taxable year, and such portion of such distribution is not less than the undistributed net income for such preceding taxable year, the trust shall be deemed to have distributed on the last day of such preceding taxable year an additional amount within the meaning of paragraph (2) of section 661(a). Such additional amount shall be equal to the taxes (other than the tax imposed by section 55) imposed on the trust for such preceding taxable year attributable to the undistributed net income. For purposes of this subsection, the undistributed net income and the taxes imposed on the trust for such preceding taxable year attributable to such undistributed net income shall be computed without regard to such accumulation distribution and without regard to any accumulation distribution determined for any succeeding taxable year.

[See main edition for text of (c) to (e)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title IV, § 421(d), 92 Stat. 2875.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600 inserted "(other than the tax imposed by section 55)" following "equal to the taxes".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b) by section 421(d) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 665, 667, 668, 904 of this title.

§ 667. Treatment of amounts deemed distributed by trust in preceding years

[See main edition for text of (a).]

(b) Tax on distribution

(1) In general

The partial tax imposed by subsection (a)(2) shall be determined.

[See main edition for text of (A) to (D)]

The partial tax imposed by subsection (a)(2) shall be the excess (if any) of the average in-

crease in tax determined under subparagraph (D), multiplied by the number of preceding taxable years determined under subparagraph (A), over the amount of taxes (other than the amount of taxes described in section 665(d)(2)) deemed distributed to the beneficiary under sections 666(b) and (c).

(2) Treatment of loss years

For purposes of paragraph (1), the taxable income of the beneficiary for any taxable year shall be deemed to be not less than—

(A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or

(B) in the case of a beneficiary who is a corporation, zero.

[*See main edition for text of (3) to (5)*]

(6) Adjustment in partial tax for estate and generation-skipping transfer taxes attributable to partial tax

(A) In general

The partial tax shall be reduced by an amount which is equal to the pre-death portion of the partial tax multiplied by a fraction—

(i) the numerator of which is that portion of the tax imposed by chapter 11 or 13, as the case may be, which is attributable (on a proportionate basis) to amounts included in the accumulation distribution, and

(ii) the denominator of which is the amount of the accumulation distribution which is subject to the tax imposed by chapter 11 or 13, as the case may be.

(B) Partial tax determined without regard to this paragraph

For purposes of this paragraph, the term "partial tax" means the partial tax imposed by subsection (a)(2) determined under this subsection without regard to this paragraph.

(C) Pre-death portion

For purposes of this paragraph, the pre-death portion of the partial tax shall be an amount which bears the same ratio to the partial tax as the portion of the accumulation distribution which is attributable to the period before the date of the death of the decedent or the date of the generation-skipping transfer bears to the total accumulation distribution.

[*See main edition for text of (c)*]

(d) Special rules for foreign trust

(1) Foreign tax deemed paid by beneficiary

(A) In general

In determining the increase in tax under subsection (b)(1)(D) for any computation year, the taxes described in section 665(d)(2) which are deemed distributed under section 666(b) or (c) and added under subsection (b)(1)(C) to the taxable income of the beneficiary for any computation year shall, except as provided in subparagraphs (B) and (C), be treated as a credit against the increase in tax for such computation year under subsection (b)(1)(D).

(B) Deduction in lieu of credit

If the beneficiary did not choose the benefits of subpart A of part III of subchapter N with respect to the computation year, the beneficiary may in lieu of treating the amounts described in subparagraph (A) (without regard to subparagraph (C)) as a credit may treat such amounts as a deduction in computing the beneficiary's taxable income under subsection (b)(1)(C) for the computation year.

(C) Limitation on credit; retention of character

(i) Limitation on credit

For purposes of determining under subparagraph (A) the amount treated as a credit for any computation year, the limitations under subpart A of part III of subchapter N shall be applied separately with respect to amounts added under subsection (b)(1)(C) to the taxable income of the beneficiary for such computation year. For purposes of computing the increase in tax under subsection (b)(1)(D) for any computation year for which the beneficiary did not choose the benefits of subpart A of part III of subchapter N, the beneficiary shall be treated as having chosen such benefits for such computation year.

(ii) Retention of character

The items of income, deduction, and credit of the Trust shall retain their character (subject to the application of section 904(f)(5)) to the extent necessary to apply this paragraph.

(D) Computation year

For purposes of this paragraph, the term "computation year" means any of the three taxable years remaining after application of subsection (b)(1)(B).

(e) Retention of character of amounts distributed from accumulation trust to nonresident aliens and foreign corporations

In the case of a distribution from a trust to a nonresident alien individual or to a foreign corporation, the first sentence of subsection (a) shall be applied as if the reference to the determination of character under section 662(b) applied to all amounts instead of just to tax-exempt interest.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(8), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95-600, title VII, §§ 701(q)(1)(B), (C), (r)(1), 702(o)(1), 92 Stat. 2909, 2910, 2936.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 701(q)(1)(C), inserted in last sentence "(other than the amount of taxes described in section 665(d)(2))" following "taxes".

Subsec. (b)(6). Pub. L. 95-600, § 702(o)(1), added subsec. (b)(6).

Subsec. (d). Pub. L. 95-600, § 701(q)(1)(B), added subsec. (d).

Subsec. (e). Pub. L. 95-600, § 701(r)(1), added subsec. (e).

1977—Subsec. (b)(2). Pub. L. 95-30 substituted "not less than (A) in the case of a beneficiary who is an individual, the zero bracket amount for such year, or (B) in the case of a beneficiary who is a corporation, zero" for "not less than zero".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) by section 701(q)(1)(C) of Pub. L. 95-600 and addition of subsec. (d) by section 701(q)(1)(B) of Pub. L. 95-600 applicable to distributions made in taxable years beginning after Dec. 31, 1975, see section 701(q)(3)(A) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 665 of this title.

Section 702(o)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [adding subsec. (b)(6) of this section] shall apply—

"(A) in the case of the tax imposed by chapter 11 of the Internal Revenue Code of 1954 [section 2001 et seq. of this title], to the estates of decedents dying after December 31, 1979, and

"(B) in the case of the tax imposed by chapter 13 [section 2601 et seq. of this title], to any generation-skipping transfer (within the meaning of section 2611(a) of such Code) made after June 11, 1976."

Section 701(r)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [adding subsec. (e) of this section] shall apply to distributions made in taxable years beginning after December 31, 1975."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 665, 668, 904 of this title.

PART II—INCOME IN RESPECT OF DECEDENTS

§ 691. Recipients of income in respect of decedents

[See main edition for text of (a) and (b)]

(c) Deduction for estate tax

[See main edition for text of (1) to (3)]

(4) Coordination with captial gain deduction, etc.

For purposes of sections 1201, 1202, and 1211, and for purposes of section 57(a)(9), the amount of any gain taken into account with respect to any item described in subsection (a)(1) shall be reduced (but not below zero) by the amount of the deduction allowable under paragraph (1) of this subsection with respect to such item.

[See main edition for text of (d) and (e)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(b)(1), 92 Stat. 2925.)

AMENDMENTS

1978—Subsec. (c)(4). Pub. L. 95-600 added par. (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(b)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [adding subsec. (c)(4) of this section] shall apply with respect to decedents dying after the date of the enactment of this Act [Nov. 6, 1978]."

Subchapter K—Partners and Partnerships

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1011, 1012, 1016, 6501 of this title; title 46 section 1177.

PART I—DETERMINATION OF TAX LIABILITY

§ 702. Income and credits of partner

(a) General rule

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 1 year,

(2) gains and losses from sales or exchanges of capital assets held for more than 1 year,

[See main edition for text of (3) to (8); (b) and (c)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (a)(1), (2). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (a)(1), (2) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 703. Partnership computations

(a) Income and deductions

The taxable income of a partnership shall be computed in the same manner as in the case of an individual except that—

(1) the items described in section 702(a) shall be separately stated, and

(2) the following deductions shall not be allowed to the partnership:

(A) the deductions for personal exemptions provided in section 151,

(B) the deduction for taxes provided in section 164(a) with respect to taxes, described in section 901, paid or accrued to foreign countries and to possessions of the United States,

(C) the deduction for charitable contributions provided in section 170,

(D) the net operating loss deduction provided in section 172,

(E) the additional itemized deductions for individuals provided in part VII of subchapter B (sec. 211 and following), and

(F) the deduction for depletion under section 611 with respect to oil and gas wells.

[See main edition for text of (b)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(10), 91 Stat. 134.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-30 struck out subpar. (A), which made reference to the standard deduction provided in section 141, and redesignated subpars. (B) to (G) as (A) to (F), respectively.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 704. Partner's distributive share

[See main edition for text of (a) to (c)]

(d) Limitation on allowance of losses

A partner's distributive share of partnership loss (including capital loss) shall be allowed only to the extent of the adjusted basis of such partner's interest in the partnership at the end of the partnership year in which such loss occurred. Any excess of such loss over such basis shall be allowed as a deduction at the end of the partnership year in which such excess is repaid to the partnership.

[See main edition for text of (e) and (f)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title II, § 201(b)(1), 92 Stat. 2816.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-600 struck out provisions relating to adjusted basis of a partner's interest.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (d) by section 201(b)(1) of Pub. L. 95-600 and enactment of provision set out as a note under this section by section 201(b)(2) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 204(a) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 465 of this title.

TRANSITIONAL RULE FOR LIMITATION ON ALLOWANCE OF LOSSES

Section 201(b)(2) of Pub. L. 95-600 provided that: "In the case of a loss which was not allowed for any taxable year by reason of the last 2 sentences of section 704(d) of the Internal Revenue Code of 1954 (as in effect before the date of the enactment of this Act [Nov. 6, 1978]), such loss shall be treated as a deduction (subject to section 465(a) of such Code) for the first taxable year beginning after December 31, 1978. Section 465(a) of such Code (as amended by this section) shall not apply with respect to partnership liabilities to which the last 2 sentences of section 704(d) of such Code (as in effect on the day before the date of enactment of this Act) did not apply because of the provisions of section 213(f)(2) of the Tax Reform Act of 1976 [set out as a note under section 709 of this title]."

PART II—CONTRIBUTIONS, DISTRIBUTIONS AND TRANSFERS

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

§ 721. Nonrecognition of gain or loss on contribution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1245, 1250, 1251 of this title.

SUBPART B—DISTRIBUTIONS BY A PARTNERSHIP

§ 731. Extent of recognition of gain or loss on distribution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 734, 751, 1245, 1250 of this title.

§ 736. Payments to a retiring partner or a deceased partner's successor in interest

[See main edition for text of (a) and (b)]

(c) Cross reference

For limitation on the tax attributable to certain gain connected with section 1248 stock, see section 751(e).

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(13)(B), 92 Stat. 2918.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Addition of subsec. (c) by section 701(u)(13)(B) of Pub. L. 95-600 applicable to transfers beginning after Oct. 9, 1975, and to sales, exchanges, and distributions taking place after Oct. 9, 1975, see section 701(u)(13)(C) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 751 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 357, 731, 751, 753 of this title; title 29 sections 1051, 1081, 1101.

SUBPART D—PROVISIONS COMMON TO OTHER SUBPARTS

§ 751. Unrealized receivables and inventory items

[See main edition for text of (a) and (b)]

(c) Unrealized receivables

For purposes of this subchapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for

[See main edition for text of (1) and (2)]

For purposes of this section and sections 731, 736, and 741, such term also includes mining property (as defined in section 617(f)(2), stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm recapture property (as defined in section 1252(e)(1)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1251(c), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or sections 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value.

[See main edition for text of (d)]

(e) Limitation on tax attributable to deemed sales of section 1248 stock

For purposes of applying this section and sections 731, 736, and 741 to any amount resulting from the reference to section 1248(a) in the second sentence of subsection (c), in the case of an individual, the tax attributable to such amount shall be limited in the manner provided by subsection (b) of section 1248 (relating to gain from certain sales or exchanges of stock in certain foreign corporation).

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(13)(A), 92 Stat. 2918; Nov. 9, 1978,

Pub. L. 95-618, title IV, § 402(c)(5), 92 Stat. 3202.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-618 substituted "oil, gas, or geothermal property" for "oil or gas property".

Subsec. (e). Pub. L. 95-600 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 263 of this title.

Section 701(u)(13)(C) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [adding subsec. (e) of this section and subsec. (c) of section 736 of this title] shall apply to transfers beginning after October 9, 1975, and to sales, exchanges, and distributions taking place after such date."

Subchapter L—Insurance Companies

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6154, 6425, 6655 of this title.

PART I—LIFE INSURANCE COMPANIES

SUBPART A—DEFINITION; TAX IMPOSED

§ 801. Definition of life insurance company

[See main edition for text of (a) to (f)]

(g) Contracts with reserves based on segregated asset accounts

(1) Definitions

[See main edition for text of (A)]

(B) Contracts with reserves based on a segregated asset account

For purposes of this part, a "contract with reserves based on a segregated asset account" is a contract—

[See main edition for text of (i)]

(ii) which is described in any paragraph of section 805(d) (other than a life, health or accident, property, casualty, or liability insurance contract) or which provides for the payment of annuities, and

[See main edition for text of (iii) and concluding par.; (2) to (6)]

(7) Basis of assets held for qualified pension plan contracts

In the case of contracts described in any paragraph of section 805(d), the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

[See main edition for text of (A), (B) and (8)]

(As amended Pub. L. 95-600, title VII, § 703(j)(4), Nov. 6, 1978, 92 Stat. 2941.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-600 in pars. (1)(B)(ii) and (7) substituted "any paragraph of section 805(d)" for "subparagraph (A), (B), (C), (D), or (E) of section 805(d)(1)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (g)(1)(13)(ii), (g)(7) by section 703(j)(4) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

§ 802. Tax imposed

(a) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

[See main edition for text of (2); (b)]

(As amended Pub. L. 95-600, title III, § 301(b)(8), Nov. 6, 1978, 92 Stat. 2821.)

AMENDMENT

1978—Subsec. (a)(1). Pub. L. 95-600 substituted "a tax" for "a normal tax and surtax".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(1) by section 301(b)(8) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

SUBPART B—INVESTMENT INCOME

§ 805. Policy and other contract liability requirements

[See main edition for text of (a) to (c)]

(d) Pension plan reserves

For purposes of this part, the term "pension plan reserves" means that portion of the life insurance reserves which is allocable to contracts—

[See main edition for text of (1) and (2)]

(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (19), (20), and (22) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws, or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

(5) purchased under contracts entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)), or

(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, for use in satisfying an obligation of such government, political subdivision, or agency or instrumentality to provide a benefit under a plan described in subparagraph (A).

[See main edition for text of (e)]

(As amended Pub. L. 95-600, title I, §§ 141(f)(9), 155(a), Nov. 6, 1978, 92 Stat. 2795, 2801.)

AMENDMENTS

1978—Subsec. (d)(3). Pub. L. 95-600, § 141(f)(9), substituted "(20), and (22)" for "and (20)".

Subsec. (d)(6). Pub. L. 95-600, § 155(a), added subsec. (d)(6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (d) by section 141(f)(9) of Pub. L. 95-600 applicable with respect to qualified investments for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409A of this title.

Section 155(b) of Pub. L. 95-600 provided that: "The amendments made by this section [adding par. (d)(6) of this section] apply to taxable years beginning after December 31, 1978."

SUBPART E—MISCELLANEOUS PROVISIONS

§ 817. Rules relating to certain gains and losses

(a) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term "property used in the trade or business" shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 9 months, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

[See main edition for text of (b)]

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (a)(1)(A). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (a)(1)(A) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

PART II—MUTUAL INSURANCE COMPANIES (OTHER THAN LIFE AND CERTAIN MARINE INSURANCE COMPANIES AND OTHER THAN FIRE OR FLOOD INSURANCE COMPANIES WHICH OPERATE ON BASIS OF PERPETUAL POLICIES OR PREMIUM DEPOSITS)

§ 821. Tax on mutual insurance companies to which part II applies

(a) Imposition of tax

A tax is hereby imposed for each taxable year on the mutual insurance company taxable income of every mutual insurance company (other than a life insurance company and other than a fire, flood, or marine insurance company subject to the tax imposed by section 831). Such tax shall consist of—

(1) In general

A tax is hereby imposed for each taxable year on the mutual insurance company taxable income of every mutual insurance company (other than a life insurance company and other than a fire, flood, or marine insurance company subject to the tax imposed by section 831). Such tax shall be computed by multiplying the mutual insurance company taxable income by the rates provided in section 11(b).

(2) Cap on tax where income is less than $12,000

The tax imposed by paragraph (1) shall not exceed 34 percent of the amount by which the mutual insurance company taxable income exceeds $6,000.

[See main edition for text of (b)]

(c) Alternative tax for certain small companies

(1) Imposition of tax

(A) In general

There is hereby imposed for each taxable year on the income of every mutual insurance company to which this subsection applies a tax (which shall be in lieu of the tax imposed by subsection (a)). Such tax shall be computed by multiplying the taxable investment income by the rates provided in section 11(b).

(B) Cap where income is less than $6,000

The tax imposed by subparagraph (A) shall not exceed 34 percent of the amount by which the taxable investment income exceeds $3,000.

[See main edition for text of (2) and (3); (d) to (f)]

(As amended May 23, 1977, Pub. L. 95-30, title II, § 201(3), (4), 91 Stat. 141; Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(9), 92 Stat. 2821.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 301(b)(9)(A), substituted "Such tax shall be computed by multiplying the mutual insurance company taxable income by the rates provided in section 11(b)" for "Such tax shall consist of", struck out provisions relating to the normal tax and the surtax, and added provision that the tax imposed by paragraph (1) not exceed 34 percent of the amount by which the mutual insurance taxable income exceeds $6,000.

Subsec. (c)(1). Pub. L. 95-600, § 301(b)(9)(B), struck out "computed as follows" following "imposed by subsection (a))" and provisions relating to a normal tax and a surtax and added provision that such tax be computed by multiplying the taxable investment income by the rates provided in section 11(b) and provision that the tax imposed by subparagraph (A) not exceed 34 percent of the amount by which the taxable investment income exceeds $3,000.

1977—Subsec. (a)(1)(A). Pub. L. 95-30, § 201(3), substituted "December 31, 1978" for "December 31, 1977".

Subsec. (a)(1)(B). Pub. L. 95-30, § 201(3), substituted "January 1, 1979" for "January 1, 1978" in the provisions preceding cl. (i).

Subsec. (c)(1)(A)(i). Pub. L. 95-30, § 201(4), substituted "December 31, 1978" for "December 31, 1977".

Subsec. (c)(1)(A)(ii). Pub. L. 95-30, § 201(4), substituted "January 1, 1979" for "January 1, 1978".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a), (c)(1), of this section by section 301(b)(9)(A), (B) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

§ 826. Election by reciprocal

[See main edition for text of (a) and (b)]

(c) Exception

An election may not be made by a reciprocal under subsection (a) unless the attorney-in-fact of such reciprocal—

(1) is subject to the tax imposed by section 11;

[See main edition for text of (2) to (4); (d) to (h)]

(As amended Pub. L. 95-600, title III, § 301(b)(10), Nov. 6, 1978, 92 Stat. 2822.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95-600 substituted "the tax imposed by section 11" for "the taxes imposed by section 11(b) and (c)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (c)(1) of this section by section 301(b)(10) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 861 of this title.

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

Part
III. Provisions which apply to both regulated investment companies and real estate investment trusts.

AMENDMENTS

1978—Pub. L. 95-600, title III, § 362(d)(8), Nov. 6, 1978, 92 Stat. 2852, added Part III "Provisions which apply to both regulated investment companies and real estate investment trusts".

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 11, 46, 50B, 52, 1504 of this title.

PART I—REGULATED INVESTMENT COMPANIES

§ 851. Definition of regulated investment company

[See main edition for text of (a)]

(b) Limitations

A corporation shall not be considered a regulated investment company for any taxable year unless—

[See main edition for text of (1)]

(2) at least 90 percent of its gross income is derived from dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the sale or other disposition of stock or securities;

[See main edition for text of (3) and (4)]

For purposes of paragraph (2), there shall be treated as dividends amounts included in gross income under section 951(a)(1)(A)(i) for the taxable year to the extent that, under section 959(a)(1), there is a distribution out of the earnings and profits of the taxable year which are attributable to the amounts so included. For purposes of paragraphs (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income.

[See main volume for text of (c) to (f)]

(As amended Aug. 15, 1978, Pub. L. 95-345, § 2(a)(3), 92 Stat. 481; Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(s)(1), 92 Stat. 2911.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600 required that for purposes of pars. (2) and (3), amounts excludable from gross income under section 103(a)(1) shall be treated as included in gross income.

Subsec. (b)(2). Pub. L. 95-345 added provisions relating to payments with respect to securities loans.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(s)(3) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsec. (b) of this section and section 852(b)(4) of this title] shall apply to taxable years beginning after December 31, 1975."

Amendment by Pub. L. 95-345 applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

§ 852. Taxation of regulated investment companies and their shareholders

[See main edition for text of (a)]

(b) Method of taxation of companies and shareholders

(1) Imposition of tax on regulated investment companies

There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a tax computed as provided in section 11,

as though the investment company taxable income were the taxable income referred to in section 11.

[*See main edition for text of (2)*]

(3) Capital gains

[*See main edition for text of (A)*]

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the company as a capital gain dividend in a written notice mailed to its shareholders not later than 45 days after the close of its taxable year; except that, if there is an increase in the excess described in subparagraph (A) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination. If the aggregate amount so designated with respect to a taxable year of the company (including capital gains dividends paid after the close of the taxable year described in section 855) is greater than the net capital gain of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such net capital gain bears to the aggregate amount so designated.

[*See main edition for text of (D)*]

(4) Loss on sale or exchange of stock held less than 31 days

(A) Loss attributable to capital gain dividend

If—

(i) under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain, and

(ii) such share is held by the taxpayer for less than 31 days,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Loss attributable to exempt-interest dividend

If—

(i) a shareholder of a regulated investment company receives an exempt-interest dividend with respect to any share, and

(ii) such share is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share shall, to the extent of the amount of such exempt-interest dividend, be disallowed.

(C) Determination of holding periods

For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock has been held for less than 31 days; except that "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

[*See main edition for text of (5), (c) and (d)*]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732; Nov. 6, 1978, Pub. L. 95-600, title III, §§ 301(b)(11), 362(c), title VII, § 701(s)(2), 92 Stat. 2822, 2851, 2911.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 301(b)(11), substituted "a tax" for "a normal tax and surtax".

Subsec. (b)(3)(C). Pub. L. 95-600, § 362(c), inserted ", except that, if there is an increase in the excess described in subparagraph (A) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination" following "amount so designated".

Subsec. (b)(4). Pub. L. 95-600, § 701(s)(2), designated first sentence, including subpars. (A) and (B), as subpar. (A), cls. (i) and (ii); added subpar. (A) heading and substituted "shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss" for "shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 1 year"; added subpar. (B); and designated second sentence as subpar. (C).

1976—Subsec. (b)(3)(B), (4). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) by section 301(b)(11) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Amendment of subsec. (b)(3)(C) by section 362(c) of Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

Amendment of subsec. (b)(4) by section 701(s)(2) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1975, see section 701(s)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 851 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (b)(3)(B), (4) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 58, 103, 443, 853, 854, 860, 891, 1201 of this title.

§ 855. Dividends paid by regulated investment company after close of taxable year

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 265, 852, 860 of this title.

PART II—REAL ESTATE INVESTMENT TRUSTS

Sec.
859. Adoption of annual accounting period.

AMENDMENTS

1978—Pub. L. 95-600, title III, 362(d)(7), Nov. 6, 1978, 92 Stat. 2852, substituted in item 859 "Adoption of annual accounting period" for "Deduction of deficiency dividends" and struck out item 860 "Adoption of annual accounting period".

§ 856. Definition of real estate investment trust

[*See main edition for text of* (a) *and* (b)]

(c) Limitations

A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

[*See main edition for text of* (1)]

(2) at least 95 percent (90 percent for taxable years beginning before January 1, 1980) of its gross income (excluding gross income from prohibited transactions) is derived from—

[*See main edition for text of* (A) *to* (E)]

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property); and

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6);

(3) at least 75 percent of its gross income (excluding gross income from prohibited transactions) is derived from—

[*See main edition for text of* (A) *to* (C)]

(D) dividends or other distributions on, and gain (other than gain from prohibited transactions) from the sale or other disposition of, transferable shares (or transferable certificates of beneficial interest) in other real estate investment trusts which meet the requirements of this part;

(E) abatements and refunds of taxes on real property;

(F) income and gain derived from foreclosure property (as defined in subsection (e));

(G) amounts (other than amounts the determination of which depends in whole or in part on the income or profits of any person) received or accrued as consideration for entering into agreements (i) to make loans secured by mortgages on real property or on interests in real property or (ii) to purchase or lease real property (including interests in real property and interests in mortgages on real property); and

(H) gain from the sale or other disposition of a real estate asset which is not a prohibited transaction solely by reason of section 857(b)(6);

(4) less than 30 percent of its gross income is derived from the sale or other disposition of—

(A) stock or securities held for less than 1 year;

(B) property in a transaction which is a prohibited transaction; and

[*See main edition for text of* (C), (5) *to* (7); (d)]

(e) Special rules for foreclosure property

[*See main edition for text of* (1) *and* (2)]

(3) Extensions

If the real estate investment trust establishes to the satisfaction of the Secretary that an extension of the grace period is necessary for the orderly liquidation of the trust's interests in such property, the Secretary may grant one or more extensions of the grace period for such property. Any such extension shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property.

[*See main edition for text of* (4), (5); (f) *and* (g)]

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 95-600, title III, § 363(a), (c), title VII, § 701(t)(2), Nov. 6, 1978, 92 Stat. 2852, 2853, 2912.)

AMENDMENTS

1978—Subsec. (c)(2)(H). Pub. L. 95-600, § 363(a)(1), added subsec. (c)(2)(H).

Subsec. (c)(3)(D). Pub. L. 95-600, § 701(t)(2) inserted "(other than gain from prohibited transactions)" following "on, and gain".

Subsec. (c)(3)(H). Pub. L. 95-600, § 363(a)(2), added subsec. (c)(3)(H).

Subsec. (c)(4)(B). Pub. L. 95-600, § 363(a)(3), substituted "property in a transaction which is a prohibited transaction" for "section 1221(1) property (other than foreclosure property)".

Subsec. (e)(3). Pub. L. 95-600, § 363(c), substituted "the Secretary may grant one or more extensions of the grace period for such property" for "the Secretary may extend the grace period for such property" and "shall not extend the grace period beyond the date which is 6 years after the date such trust acquired such property" for "shall be for a period of not more than one year, and not more than two extensions shall be granted with respect to any property".

1976—Subsec. (c)(4). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 363(d) of Pub. L. 95-600 provided that: "The amendments made by subsections (a) [amending subsecs. (c)(2)(F) to (H), (c)(3)(F) to (H), (c)(4)(B) of this section] and (b) [amending section 857(b)(6)(C) to (E) of this title] shall apply to taxable years ending after the date of the enactment of this Act [Nov. 6, 1978]. The amendment made by subsection (c) [amending subsec. (e)(3) of this section] shall apply to extensions granted after the date of the enactment of this Act [Nov. 6, 1978] with respect to periods beginning after December 31, 1977."

Amendment of subsec. (c)(3)(D) by section 701(t)(2) of Pub. L. 95-600 effective Oct. 4, 1976, see section

701(t)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 859 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (c)(4) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 857. Taxation of real estate investment trusts and their beneficiaries

[See main edition for text of (a)]

(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest

(1) Imposition of tax on real estate investment trusts

There is hereby imposed for each taxable year on the real estate investment trust taxable income of every real estate investment trust a tax computed as provided in section 11, as though the real estate investment trust taxable income were the taxable income referred to in section 11.

[See main edition for text of (2)]

(3) Capital gains

(A) Alternative tax in case of capital gains

If for any taxable year a real estate investment trust has a net capital gain, then, in lieu of the tax imposed by subsection (b)(1), there is hereby imposed a tax (if such tax is less than the tax imposed by such subsection) which shall consist of the sum of—

[See main edition for text of (i)]

(ii) a tax determined at the rate provided in section 1201(a) on the excess of the net capital gain over the deduction for dividends paid (as defined in section 561) determined with reference to capital gains dividends only.

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 1 year.

(C) Definition of capital gain dividend

For purposes of this part, a capital gain dividend is any dividend, or part thereof, which is designated by the real estate investment trust as a capital gain dividend in a written notice mailed to its shareholders or holders of beneficial interests at any time before the expiration of 30 days after the close of its taxable year; except that, if there is an increase in the excess described in subparagraph (A)(ii) of this paragraph for such year which results from a determination (as defined in section 860(e)), such designation may be made with respect to such increase at any time before the expiration of 120 days after the date of such determination. If the aggregate amount so designated with respect to a taxable year of the trust (including capital gain dividends paid after the close of the taxable year described in section 858) is greater than the net capital gain of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such net capital gain bears to the aggregate amount so designated. For purposes of this subparagraph, the net capital gain shall be deemed not to exceed the real estate investment trust taxable income (determined without regard to the deduction for dividends paid (as defined in section 561) for the taxable year).

[See main edition for text of (4) and (5)]

(6) Income from prohibited transactions

[See main edition for text of (A) and (B)]

(C) Certain sales not to constitute prohibited transactions

For purposes of this part, the term "prohibited transaction" does not include a sale of property which is a real estate asset as defined in section 856(c)(6)(B) if—

(i) the trust has held the property for not less than 4 years;

(ii) aggregate expenditures made by the trust, or any partner of the trust, during the 4-year period preceding the date of sale which are includible in the basis of the property do not exceed 20 percent of the net selling price of the property;

(iii) during the taxable year the trust does not make more than 5 sales of property (other than foreclosure property); and

(iv) in the case of property, which consists of land or improvements, not acquired through foreclosure (or deed in lieu of foreclosure), or lease termination, the trust has held the property for not less than 4 years for production of rental income.

(D) Special rules

In applying subparagraph (C) the following special rules apply:

(i) The holding period of property acquired through foreclosure (or deed in lieu of foreclosure), or termination of the lease, includes the period for which the trust held the loan which such property secured, or the lease of such property.

(ii) In the case of a property acquired through foreclosure (or deed in lieu of foreclosure), or termination of a lease, expenditures made by, or for the account of, the mortgagor or lessee after default became imminent will be regarded as made by the trust.

(iii) Expenditures (including expenditures regarded as made directly by the trust, or indirectly by any partner of the trust, under clause (ii)) will not be taken into account if they relate to foreclosure property and did not cause the property to lose its status as foreclosure property.

(iv) Expenditures will not be taken into account if they are made solely to comply

with standards or requirements of any government or governmental authority having relevant jurisdiction, or if they are made to restore the property as a result of losses arising from fire, storm or other casualty.

(v) The term "expenditures" does not include advances on a loan made by the trust.

(vi) The sale of more than one property to one buyer as part of one transaction constitutes one sale.

(vii) The term "sale" does not include any transaction in which the net selling price is less than $10,000.

(E) Sales not meeting requirements

In determining whether or not any sale constitutes a "prohibited transaction" for purposes of subparagraph (A), the fact that such sale does not meet the requirements of subparagraph (C) of this paragraph shall not be taken into account; and such determination, in the case of a sale not meeting such requirements, shall be made as if subparagraphs (C) and (D) had not been enacted.

(7) Loss on sale or exchange of stock held less than 31 days

If—

(A) under subparagraph (B) of paragraph (3) a shareholder of, or a holder of a beneficial interest in, a real estate investment trust is required, with respect to any share or beneficial interest, to treat any amount as a long-term capital gain, and

(B) such share or interest is held by the taxpayer for less than 31 days,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in subparagraph (A) of this paragraph, be treated as loss from the sale or exchange of a capital asset held for more than 1 year. For purposes of this paragraph, the rules of section 246(c)(3) shall apply in determining whether any share of stock or beneficial interest has been held for less than 31 days; except that "30 days" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

[*See main edition for text of* (c) *to* (e)]

(As amended Pub. L. 94–455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732; Pub. L. 95–600, title III, §§ 301(b)(12), 362(d)(3), 363(b), title IV, § 403(c)(3), Nov. 6, 1978, 92 Stat. 2822, 2851, 2852, 2868.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95–600, § 301(b)(12), substituted "a tax" for "a normal tax and surtax".

Subsec. (b)(3)(A)(ii). Pub. L. 95–600, § 403(c)(3), substituted "a tax determined at the rate provided in section 1201(a) on" for "a tax of 30 percent of".

Subsec. (b)(3)(C). Pub. L. 95–600, § 362(d)(3), substituted "section 860(e)" for "section 859(c)".

Subsec. (b)(6). Pub. L. 95–600, § 363(b), added subpars. (C) to (E).

1976—Subsec. (b)(3)(B), (7). Pub. L. 94–455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) by section 301(b)(12) of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Amendment of subsec. (b)(3)(A)(ii) of this section by section 403(c)(3) of Pub. L. 95–600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 528 of this title.

Amendment of subsec. (b)(3)(C) of this section by section 362(d)(3) of Pub. L. 95–600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 860 of this title.

Amendment of subsec. (b)(6)(C) to (E) of this section by section 363(b) of Pub. L. 95–600 applicable to taxable years ending after Nov. 6, 1978, see section 363(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 856 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94–455 provided in part for the substitution of "1 year" for "9 months" in subsec. (b)(3)(B), (7) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 58, 172, 443, 856, 860, 1201, 4981 of this title.

§ 858. Dividends paid by real estate investment trust after close of taxable year

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 857, 860 of this title.

§ 859. Adoption of annual accounting period

For purposes of this subtitle—

(1) a real estate investment trust shall not change to any accounting period other than the calendar year, and

(2) a corporation, trust, or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

Paragraph (2) shall not apply to a corporation, trust, or association which was considered to be a real estate investment trust for any taxable year beginning on or before October 4, 1976.

(Added Pub. L. 94–455, title XVI, § 1604(i)(1), Oct. 4, 1976, 90 Stat. 1752, § 860, renumbered and amended Pub. L. 95–600, title III, § 362(d)(6), title VII, § 701(t)(1), Nov. 6, 1978, 92 Stat. 2852, 2911.)

PRIOR PROVISIONS

A prior section 859, added Pub. L. 94–455, title XVI, § 1601(a)(1), Oct. 4, 1976, 90 Stat. 1742, which related to a deduction for deficiency dividends, was repealed by Pub. L. 95–600, title III, § 362(d)(6), Nov. 6, 1978, 92 Stat. 2852. See section 860 of this title.

AMENDMENTS

1978—Pub. L. 95–600, § 701(t)(1), designated existing provisions as par. (1), substituted therein "change to any accounting period" for "change to or adopt any annual accounting period", and added par. (2) and provision for nonapplicability of such par. (2) to a real

estate investment trust for any taxable year beginning on or before Oct. 4, 1976.

EFFECTIVE DATE OF 1978 AMENDMENT

Repeal of prior section 859 of this title and redesignation of former section 860 of this title as this section by section 362(d)(6) of Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

Section 701(t)(5) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending this section, and sections 275(a)(6), 856(c)(3)(D), 6212(c)(1), and 6501(e)(3) of this title] shall take effect on October 4, 1976."

PART III—PROVISIONS WHICH APPLY TO BOTH REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS

Sec.
860. Deduction for deficiency dividends.

§ 860. Deduction for deficiency dividends

(a) General rule

If a determination with respect to any qualified investment entity results in any adjustment for any taxable year, a deduction shall be allowed to such entity for the amount of deficiency dividends for purposes of determining the deduction for dividends paid (for purposes of section 852 or 857, whichever applies) for such year.

(b) Qualified investment entity defined

For purposes of this section, the term "qualified investment entity" means—

(1) a regulated investment company, and

(2) a real estate investment trust.

(c) Rules for application of section

(1) Interest and additions to tax determined with respect to the amount of deficiency dividend deduction allowed

For purposes of determining interest, additions to tax, and additional amounts—

(A) the tax imposed by this chapter (after taking into account the deduction allowed by subsection (a)) on the qualified investment entity for the taxable year with respect to which the determination is made shall be deemed to be increased by an amount equal to the deduction allowed by subsection (a) with respect to such taxable year,

(B) the last date prescribed for payment of such increase in tax shall be deemed to have been the last date prescribed for the payment of tax (determined in the manner provided by section 6601(b)) for the taxable year with respect to which the determination is made, and

(C) such increase in tax shall be deemed to be paid as of the date the claim for the deficiency dividend deduction is filed.

(2) Credit or refund

If the allowance of a deficiency dividend deduction results in an overpayment of tax for any taxable year, credit or refund with respect to such overpayment shall be made as if on the date of the determination 2 years remained before the expiration of the period of limitations on the filing of claim for refund for the taxable year to which the overpayment relates.

(d) Adjustment

For purposes of this section—

(1) Adjustment in the case of regulated investment company

In the case of any regulated investment company, the term "adjustment" means—

(A) any increase in the investment company taxable income of the regulated investment company (determined without regard to the deduction for dividends paid (as defined in section 561)),

(B) any increase in the amount of the excess described in section 852(b)(3)(A) (relating to the excess of the net capital gain over the deduction for capital gain dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(2) Adjustment in the case of real estate investment trust

In the case of any real estate investment trust, the term "adjustment" means—

(A) any increase in the sum of—

(i) the real estate investment trust taxable income of the real estate investment trust (determined without regard to the deduction for dividends paid (as defined in section 561) and by excluding any net capital gain), and

(ii) the excess of the net income from foreclosure property (as defined in section 857(b)(4)(B)) over the tax on such income imposed by section 857(b)(4)(A),

(B) any increase in the amount of the excess described in section 857(b)(3)(A)(ii) (relating to the excess of the net capital gain over the deduction for capital gains dividends paid), and

(C) any decrease in the deduction for dividends paid (as defined in section 561) determined without regard to capital gains dividends.

(e) Determination

For purposes of this section, the term "determination" means—

(1) a decision by the Tax Court, or a judgment, decree, or other order by any court of competent jurisdiction, which has become final;

(2) a closing agreement made under section 7121; or

(3) under regulations prescribed by the Secretary, an agreement signed by the Secretary and by, or on behalf of, the qualified investment entity relating to the liability of such entity for tax.

(f) Efficiency[1] dividends.

(1) Definition

For purposes of this section, the term "deficiency dividends" means a distribution of

[1] So in original. Probably should be "Deficiency".

property made by the qualified investment entity on or after the date of the determination and before filing claim under subsection (g), which would have been includible in the computation of the deduction for dividends paid under section 561 for the taxable year with respect to which the liability for tax resulting from the determination exists if distributed during such taxable year. No distribution of property shall be considered as deficiency dividends for purposes of subsection (a) unless distributed within 90 days after the determination, and unless a claim for a deficiency dividend deduction with respect to such distribution is filed pursuant to subsection (g).

(2) Limitations

(A) Ordinary dividends

The amount of deficiency dividends (other than deficiency dividends qualifying as capital gain dividends) paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the sum of—

(i) the excess of the amount of increase referred to in subparagraph (A) of paragraph (1) or (2) of subsection (d) (whichever applies) over the amount of any increase in the deduction for dividends paid computed [1] without regard to capital gain dividends) for such taxable year which results from such determination, and

(ii) the amount of decreased [2] referred to in subparagraph (C) of paragraph (1) or (2) of subsection (d) (whichever applies).

(B) Capital gain dividends

The amount of deficiency dividends qualifying as capital gain dividends paid by a qualified investment entity for the taxable year with respect to which the liability for tax resulting from the determination exists shall not exceed the amount by which (i) the increase referred to in subparagraph (B) of paragraph (1) or (2) of subsection (d) (whichever applies), exceeds (ii) the amount of any dividends paid during such taxable year which are designated as capital gain dividends after such determination.

(3) Effect on dividends paid deduction

(A) For taxable year in which paid

Deficiency dividends paid in any taxable year shall not be included in the amount of dividends paid for such year for purposes of computing the dividends paid deduction for such year.

(B) For prior taxable year

Deficiency dividends paid in any taxable year shall not be allowed for purposes of section 855(a) or 858(a) in the computation of the dividends paid deduction for the taxable year preceding the taxable year in which paid.

(g) Claim required

No deficiency dividend deduction shall be allowed under subsection (a) unless (under regulations prescribed by the Secretary) claim therefore is filed within 120 days after the date of the determination.

(h) Suspension of statute of limitations and stay of collection

(1) Suspension of running of statute

If the qualified investment entity files a claim as provided in subsection (g), the running of the statute of limitations provided in section 6501 on the making of assessments, and the bringing of distraint or a proceeding in court for collection, in respect of the deficiency established by a determination under this section, and all interest, additions to tax, additional amounts, or assessable penalties in respect thereof, shall be suspended for a period of 2 years after the date of the determination.

(2) Stay of collection

In the case of any deficiency established by a determination under this section—

(A) the collection of the deficiency, and all interest, additions to tax, additional amounts, and assessable penalties in respect thereof, shall, except in cases of jeopardy, be stayed until the expiration of 120 days after the date of the determination, and

(B) if claim for a deficiency dividend deduction is filed under subsection (g), the collection of such part of the deficiency as is not reduced by the deduction for deficiency dividends provided in subsection (a) shall be stayed until the date the claim is disallowed (in whole or in part), and if disallowed in part collection shall be made only with respect to the part disallowed.

No distraint or proceeding in court shall be begun for the collection of an amount the collection of which is stayed under subparagraph (A) or (B) during the period for which the collection of such amount is stayed.

(i) Deduction denied in case of fraud

No deficiency dividend deduction shall be allowed under subsection (a) if the determination contains a finding that any part of any deficiency attributable to an adjustment with respect to the taxable year is due to fraud with intent to evade tax or to willfull failure to file an income tax return within the time prescribed by law or prescribed by the Secretary in pursuance of law.

(j) Penalty

For assessable penalty with respect to liability for tax of a qualified investment entity which is allowed a deduction under subsection (a), see section 6697.

(Added Pub. L. 95-600, title III, § 362(a), Nov. 6, 1978, 92 Stat. 2848.)

PRIOR PROVISIONS

A prior section 860, added Pub. L. 94-455, title XVI, § 1604(i)(1), Oct. 4, 1976, 90 Stat. 1752, was redesignated section 859 by section 362(d)(6) of Pub. L. 95-600.

EFFECTIVE DATE

Section 362(e) of Pub. L. 95-600 provided that: "The amendments made by this section [adding this section, amending sections 316(b)(3), 381(c)(25), 852(b)(3)(C), 857(b)(3)(C), 6422(14), 6503(i)(5), 6515(5), and 6697 of this title, striking out former section 859 of this title

[1] So in original. Probably should be "(computed".

[2] So in original. Probably should be "decrease".

and redesignating former section 860 as 859 of this title] shall apply with respect to determinations (as defined in section 860(d) of the Internal Revenue Code of 1954 [subsec. (d) of this section]) after the date of the enactment of this Act [Nov. 6, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 316, 381, 852, 857, 6422, 6503, 6515, 6697 of this title.

Subchapter N—Tax Based on Income From Sources Within or Without the United States

PART I—DETERMINATION OF SOURCES OF INCOME

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 55, 306, 901, 905, 931, 7654 of this title.

§ 861. Income from sources within the United States

(a) Gross income from sources within United States

The following items of gross income shall be treated as income from sources within the United States:

(1) Interest

Interest from the United States or the District of Columbia, and interest on bonds, notes, or other interest-bearing obligations of residents, corporate or otherwise, not including—

[*See main edition for text of (A) to (E)*]

(F) interest—

(i) on deposits with a foreign branch of a domestic corporation or a domestic partnership if such branch is engaged in the commercial banking business, and

(ii) on amounts satisfying the requirements of paragraph (2) of subsection (c) which are paid by a foreign branch of a domestic corporation or a domestic partnership,

[*See main edition for text of (G), (H), (2) to (7)*]

(b) Taxable income from sources within United States

From the items of gross income specified in subsection (a) as being income from sources within the United States there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be included in full as taxable income from sources within the United States. In the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

[*See main edition for text of (c) to (e)*]

(f) Income from certain railroad rolling stock treated as income from sources within the United States

(1) General rule

For purposes of subsection (a) and section 826(a), if—

(A) a taxpayer leases railroad rolling stock which is section 38 property (or would be section 38 property but for section 48(a)(5)) to a domestic common carrier by railroad or a corporation which is controlled, directly or indirectly, by one or more such common carriers, and

(B) the use under such lease is expected to be use within the United States,

all amounts includible in gross income by the taxpayer with respect to such railroad rolling stock (including gain from sale or other disposition of such railroad rolling stock) shall be treated as income from sources within the United States. The requirements of subparagraph (B) of the preceding sentence shall be treated as satisfied if the only expected use outside the United States is use by a person (whether or not a United States person) in Canada or Mexico on a temporary basis which is not expected to exceed a total of 90 days in any taxable year.

(2) Paragraph (1) not to apply where lessor is a member of controlled group which includes a railroad

Paragraph (1) shall not apply to a lease between two members of the same controlled group of corporations (as defined in section 1563) if any member of such group is a domestic common carrier by railroad or a switching or terminal company referred to in subparagraph (B) of section 184(d)(1).

(3) Denial of foreign tax credit

No credit shall be allowed under section 901 for any payments to foreign countries with respect to any amount received by the taxpayer with respect to railroad rolling stock which is subject to paragraph (1).

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(9), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95-600, title III, § 370(a), title V, § 540(a), 92 Stat. 2858, 2887.)

AMENDMENTS

1978—Subsec. (a)(1)(F). Pub. L. 95-600, § 540(a), designated existing provisions as cl. (i), and added cl. (ii).

Subsec. (f). Pub. L. 95-600, § 370(a), added subsec. (f).

1977—Subsec. (b). Pub. L. 95-30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 540(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (a)(1)(F) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [Nov. 6, 1978]."

Section 370(b) of Pub. L. 95-600 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [adding subsec. (f)] shall apply to all railroad rolling stock placed in service with respect to the taxpayer after the date of the enactment of this Act [Nov. 6, 1978].

"(2) ELECTION TO EXTEND SECTION 861(f) TO RAILROAD ROLLING STOCK PLACED IN SERVICE BEFORE DATE OF ENACTMENT.

"(A) IN GENERAL.—At the election of the taxpayer, the amendment made by subsection (a) shall also apply, for taxable years beginning after the date of the enactment of this Act, to all railroad rolling stock placed in service with respect to the taxpayer on or before such date of enactment. Such an elec-

tion may not be revoked except with the consent of the Secretary of the Treasury or his delegate.

"(B) MANNER AND TIME OF ELECTION AND REVOCATION.—An election under subparagraph (A), and any revocation of such an election, shall be made in such manner and at such time as the Secretary of the Treasury or his delegate may by regulations prescribe."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 105, 410, 638, 862 to 864, 907, 2104, 2105, 4948 of this title.

§ 862. Income from sources without the United States

[See main edition for text of (a)]

(b) Taxable income from sources without United States

From the items of gross income specified in subsection (a) there shall be deducted the expenses, losses, and other deductions properly apportioned or allocated thereto, and a ratable part of any expenses, losses, or other deductions which cannot definitely be allocated to some item or class of gross income. The remainder, if any, shall be treated in full as taxable income from sources without the United States. In the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

[See main edition for text of (c)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(10), 91 Stat. 138.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-30 provided that, in the case of an individual who does not itemize deductions, an amount equal to the zero bracket amount shall be considered a deduction which cannot definitely be allocated to some item or class of gross income.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

SUBPART A—NONRESIDENT ALIEN INDIVIDUALS

§ 871. Tax on nonresident alien individuals

[See main edition for text of (a)]

(b) Income connected with United States business—graduated rate of tax

(1) Imposition of tax

A nonresident alien individual engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 1, section 55, or 402(e)(1) on his taxable income which is effectively connected with the conduct of a trade or business within the United States.

[See main edition for text of (2); (c) to (g)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title IV, §§ 401(b)(3), 421(e)(4), 92 Stat. 2867, 2876.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, §§ 401(b)(3), 421(e)(4), substituted "section 1, section 55, or 402(e)(1)" for "section 1, 402(e)(1), or 1201(b)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) by section 401(b)(3) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95-600, set out as as an Effective Date of 1978 Amendment note under section 1201 of this title.

Amendment of subsec. (b)(1) by section 421(e)(4) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

§ 873. Deductions

[See main edition for text of (a) and (b)]

(c) Cross reference

For rule that certain foreign taxes are not to be taken into account in determining deduction or credit, see section 906(b)(1).

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(11), 91 Stat. 134.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-30 struck out par. (1) which made a cross reference to section 142(b)(1) for disallowance of the standard deduction and struck out "(2)" at the beginning of the single remaining cross reference.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 877. Expatriation to avoid tax

[See main edition for text of (a)]

(b) Alternative tax

A nonresident alien individual described in subsection (a) shall be taxable for the taxable year as provided in section 1, section 55, 402(e)(1), or section 1201(b), except that—

[See main edition for text of (1), (2), and concluding par.; (c) to (e)]

(As amended Pub. L. 95-600, title IV, § 421(e)(5), Nov. 6, 1978, 92 Stat. 2876.)

REFERENCES IN TEXT

Sections 350 and 355 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1482, 1487), referred to in subsec. (d), were repealed by Pub. L. 95-432, §§ 1, 2, Oct. 10, 1978, 92 Stat. 1046, respectively.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600 substituted "section 1, section 55," for "section 1".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b) by section 421(e)(5) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

SUBPART B—FOREIGN CORPORATIONS

§ 882. Tax on income of foreign corporations connected with United States business

(a) Imposition of tax

(1) In general

A foreign corporation engaged in trade or business within the United States during the taxable year shall be taxable as provided in section 11 or 1201(a) on its taxable income which is effectively connected with the conduct of a trade or business within the United States.

[See main edition for text of (2); (b) to (f)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(13), 92 Stat. 2822.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 substituted in subsec. heading "Imposition of tax" for "Normal tax and surtax" and in par. (1) heading "In general" for "Imposition of tax".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(1) by section 301(b)(13) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart
B. Earned income of citizens or residents of United States.
[E. Repealed.]

AMENDMENTS

1978—Pub. L. 95-615, title II, § 202(f)(4), Nov. 8, 1978, 92 Stat. 3100, inserted in the item relating to subpart B "or residents" following "citizens".

1976—Pub. L. 94-455, title X, § 1053(d)(5), Oct. 4, 1976, 90 Stat. 1649, struck out subpart E, effective for taxable years beginning after Dec. 31, 1977.

SUBPART A—FOREIGN TAX CREDIT

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 78, 172, 667, 1351 of this title.

§ 901. Taxes of foreign countries and of possessions of United States

[See main edition for text of (a) to (f)]

(g) Certain taxes paid with respect to distributions from possessions corporations

(1) In general

For purposes of this chapter, any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation—

(A) to the extent that such distribution is attributable to periods during which such corporation is a possessions corporation, and

(B)(i) if a dividends received deduction is allowable with respect to such distribution under part VIII of subchapter B, or

(ii) to the extent that such distribution is received in connection with a liquidation or other transaction with respect to which gain or loss is not recognized,

shall not be treated as income, war profits, or excess profits taxes paid or accrued to a foreign country or possession of the United States, and no deduction shall be allowed under this title with respect to any amount so paid or accrued.

(2) Possessions corporation

For purposes of paragraph (1), a corporation shall be treated as a possessions corporation for any period during which an election under section 936 applied to such corporation, during which section 931 (as in effect on the day before the date of the enactment of the Tax Reform Act of 1976) applied to such corporation, or during which section 957(c) applied to such corporation.

[See main edition for text of (h)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(1)(A), (B), 92 Stat. 2912.)

AMENDMENTS

1978—Subsec. (g)(1). Pub. L. 95-600, § 701(u)(1)(A), inserted provisions prohibiting a deduction for any tax of a foreign country or possession of the United States which is paid or accrued with respect to any distribution from a corporation if a dividends received deduction is allowable with respect to that distribution from a corporation under part VIII of subchapter B.

Subsec. (g)(2). Pub. L. 95-600, § 701(u)(1)(B), added provision relating to the application of section 957(c) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(1)(C) of Pub. L. 95-600 provided that: "The amendment made by subparagraph (A) [amending subsec. (g)(1) of this section] shall apply as if included in section 901(g) of the Internal Revenue Code of 1954 as added by section 1051(d)(2) of the Tax Reform Act of 1976 [section 1051(d)(2) of Pub. L. 94-455]. The amendments made by subparagraph (B) [amending subsec. (g)(2) of this section] shall apply to distributions made after the date of the enactment of this Act [Nov. 6, 1978] in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33, 55, 243, 275, 515, 642, 702, 703, 841, 853, 861, 874, 882, 904 to 908, 931, 960, 1247, 1503, 6038, 6511 of this title.

§ 903. Credit for taxes in lieu of income, etc., taxes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 55 of this title.

§ 904. Limitation on credit

(a) Limitation

The total amount of the credit taken under section 901(a) shall not exceed the same proportion of the tax against which such credit is taken which the taxpayer's taxable income from sources without the United States (but not in excess of the taxpayer's entire taxable income) bears to his entire taxable income for the same taxable year. For purposes of the preceding sentence, in the case of an individual the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

(b) Taxable income for purpose of computing limitation

[*See main edition for text of (1)*]

(2) Capital gains

For purposes of this section—

(A) Corporations

In the case of a corporation—

(i) the taxable income of such corporation from sources without the United States shall include gain from the sale or exchange of capital assets only in an amount equal to foreign source capital gain net income reduced by the rate differential portion of foreign source net capital gain,

(ii) the entire taxable income of such corporation shall include gain from the sale or exchange of capital assets only in an amount equal to capital gain net income reduced by the rate differential portion of net capital gain, and

(iii) for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short-term capital loss under section 1212(a)) from sources without the United States to the extent taken into account in determining capital gain net income for the taxable year shall be reduced by an amount equal to the rate differential portion of the excess of net capital gain from sources within the United States over net capital gain.

[*See main edition for text of (B)*]

(3) Definitions

For purposes of this subsection—

[*See main edition for text of (A) and (B)*]

(C) Exception for gain from the sale of certain personal property

There shall be included as gain from sources within the United States any gain from sources without the United States from the sale or exchange of a capital asset which is personal property which—

[*See main edition for text of (i) to (iii)*]

unless such gain is subject to an income, war profits, or excess profits tax of a foreign country or possession of the United States, and the rate of tax applicable to such gain is 10 percent or more of the gain from the sale or exchange (computed under this chapter).

(D) Gain from liquidation of certain foreign corporations

Subparagraph (C) shall not apply with respect to a distribution in liquidation of a foreign corporation to which part II of subchapter C applies if such corporation derived less than 50 percent of its gross income from sources within the United States for the 3-year period ending with the close of such corporation's taxable year immediately preceding the year during which the distribution occurred.

(E) Section 1231 gains

The term "gain from the sale or exchange of capital assets" includes any gain so treated under section 1231,

(E)[1] Rate differential portion

The "rate differential portion" of foreign source net capital gain, net capital gain, or the excess of net capital gain from sources within the United States over net capital gain, as the case may be, is the same proportion of such amount as the excess of the highest rate of tax specified in section 11(b) over the alternative rate of tax under section 1201(a) bears to the highest rate of tax specified in section 11(b).

[*See main edition for text of (4); (c) to (e)*]

(f) Recapture of overall foreign loss

[*See main edition for text of (1)*]

(2) Overall foreign loss defined

For purposes of this subsection, the term "overall foreign loss" means the amount by which the gross income for the taxable year from sources without the United States (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account—

(A) any net operating loss deduction allowable for such year under section 172(a), and

[*See main edition for text of (B)*]

to the extent such loss is not compensated for by insurance or otherwise.

[*See main edition for text of (3)*]

(4) Determination of foreign oil related loss where section 907 applies

In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b), the foreign oil related loss shall be the amount by which the gross income for the taxable year from sources without the United States and its possessions (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) taken into account in determining the foreign oil related income for such year is exceeded by the sum of the deductions properly apportioned or allocated thereto, except that there shall not be taken into account—

(A) any net operating loss deduction allowable for such year under section 172(a), and

[*See main edition for text of (B)*]

to the extent such loss is not compensated for by insurance or otherwise.

(5) Accumulation distributions of foreign trust

For purposes of this chapter, in the case of amounts of income from sources without the

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[1] So in original. Probably should be "(F)".

United States which are treated under section 666 (without regard to subsections (b) and (c) thereof if the taxpayer chose to take a deduction with respect to the amounts described in such subsections under section 667(d)(1)(B)) as having been distributed by a foreign trust in a preceding taxable year, that portion of such amounts equal to the amount of any overall foreign loss sustained by the beneficiary in a year prior to the taxable year of the beneficiary in which such distribution is received from the trust shall be treated as income from sources within the United States (and not income from sources without the United States) to the extent that such loss was not used under this subsection in prior taxable years, or in the current taxable year, against other income of the beneficiary.

[See main edition for text of (g)]

(h) Cross references

(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken by an individual against the alternative minimum tax, see section 55(c).

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(11), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95-600, title IV, §§ 403(c)(4), 421(e)(6), title VII, § 701(q)(2), (u)(2)(A)-(C), (3)(A), (4)(A), (B), (8)(C), 92 Stat. 2868, 2876, 2910, 2913, 2916.)

CODIFICATION

Two subpars. (E) of subsec. (b)(3) were designated by Pub. L. 95-600, §§ 403(c)(4)(B) and 701(u)(2)(C). See 1978 Amendment note below.

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-600, §§ 403(c)(4)(A), 701(u)(2)(A), (3)(A), in subpar. (A) substituted "this section" for "subsection (a)", "the rate differential portion" for "three eighths" wherever appearing, and "for purposes of determining taxable income from sources without the United States, any net capital loss (and any amount which is a short term capital loss under section 1212(a))" for "any net capital loss".

Subsec. (b)(3). Pub. L. 95-600, §§ 403(c)(4)(B), 701(u)(2)(B), (C), substituted "There" for "For purposes of this paragraph, there", added subpar. (D), redesignated former subpar. (D), relating to section 1231 gains, as subpar. (E), and added another subpar. (E), relating to rate differential portion.

Subsec. (f)(2)(A). Pub. L. 95-600, § 701(u)(4)(A), struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(4). Pub. L. 95-600, § 701(u)(4)(B), (8)(C), substituted in provisions preceding subpar. (A) "In making the separate computation under this subsection with respect to foreign oil related income which is required by section 907(b)" for "In the case of a corporation to which section 907(b)(1) applies" and in subpar. (A) struck out provision relating to capital loss carrybacks and carryovers.

Subsec. (f)(5). Pub. L. 95-600, § 701(q)(2), added par. (5).

Subsec. (h). Pub. L. 95-600, § 421(e)(6), designated existing provisions as par. (1) and added par. (2).

1977—Subsec. (a). Pub. L. 95-30 provided that, for purposes of determining the maximum total amount of the credit taken under section 901(a), in the case of an individual, the entire taxable income shall be reduced by an amount equal to the zero bracket amount.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(2)(D) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [amending subsec. (b)(2), (3)(C), (D), and (E) of this section] shall apply to taxable years beginning after December 31, 1975."

Section 701(u)(3)(B) of Pub. L. 95-600 provided that: "The amendment made by subparagraph (A) [amending subsec. (b)(2)(A)(ii) of this section] shall apply to taxable years beginning after December 31, 1975."

Amendment of subsecs. (b)(3)(D), (E) by section 403(c)(4) of Pub. L. 95-600 effective on Nov. 6, 1978, see section 403(d)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 528 of this title.

Section 701(u)(4)(C) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [amending subsec. (f)(2)(A) and (4)(A) of this section] shall apply—

"(i) to overall foreign losses sustained in taxable years beginning after December 31, 1975, and

"(ii) to foreign oil related losses sustained in taxable years ending after December 31, 1975."

Amendment of subsec. (f)(4) by section 701(a)(8)(C) of Pub. L. 95-600 applicable, in the case of individuals, to taxable years ending after Dec. 31, 1974, and, in the case of corporations, to taxable years ending after Dec. 31, 1976, see section 701(u)(8)(D) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 907 of this title.

Section 701(q)(3)(B) of Pub. L. 95-600 provided that: "The amendments made by paragraph (2) [adding subsec. (f)(5) of this section] shall take effect as if included in section 904(f) of the Internal Revenue Code of 1954, as such provision was added to such Code by section 1032(a) of the Tax Reform Act of 1976 [section 1032(a) of Pub. L. 94-455]."

Amendment of subsec. (h) by section 421(e)(6) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

* * * * *

Section 1031(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 701(u)(6), (7)(B)(ii), Nov. 6, 1978, 92 Stat. 2914, 2916, provided that:

"(1) In general.—Except as provided in paragraphs (2) and (3), the amendments made by this section [amending sections 243(b)(3)(B), 383, 901(a), (b), 904, 907(e)(1), (2), 960(b), 1351(d)(3), 1503(b)(1), 6038(b)(1)(A) and 6501(i) of this title] shall apply to taxable years beginning after December 31, 1975.

"(2) Exception for certain mining operations.—In the case of a domestic corporation or includible corporation in an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1954) which has as of October 1, 1975—

"(A) been engaged in the active conduct of the trade or business of the extraction of minerals (of a character with respect to which a deduction for depletion is allowable under section 613 of such Code) outside the United States or its possessions for less than 5 years preceding the date of enactment of this Act [Oct. 4, 1976],

"(B) had deductions properly apportioned or allocated to its gross income from such trade or business in excess of such gross income in at least 2 taxable years,

"(C) 80 percent of its gross receipts are from the sale of such minerals, and

"(D) made commitments for substantial expansion of such mineral extraction activities,

the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038 and 6501 of this title] shall apply to taxable years beginning after December 31, 1978. In the case of a loss sustained in a taxable year beginning before January 1, 1979, by any corporation to which this paragraph applies, if section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to such loss under the principles of such section 904(a)(1).

"(3) Exception for income from possessions.—In the case of gross income from sources within a possession of the United States (and the deductions properly apportioned or allocated thereto), the amendments made by this section [amending this section and sections 243, 383, 901, 907, 960, 1351, 1503, 6038 and 6501 of this title] shall apply to taxable years beginning after December 31, 1978.

* * * * *

Section 1032(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 701(u)(5), (7)(A), (B)(i), Nov. 6, 1978, 92 Stat. 2914, provided that:

"(1) In general.—Except as provided in paragraphs (2), (3), and (5), the amendment made by subsection (a) [adding subsec. (f) of this section and redesignating former subsec. (f) as (g)] shall apply to losses sustained in taxable years beginning after December 31, 1975. The amendment made by subsection (b)(1) [amending section 907(b) of this title] shall apply to taxable years beginning after December 31, 1975. The amendment made by subsection (b)(2) [repealing section 907(f) of this title and redesignating former section 907(g) as 907(f)] shall apply to losses sustained in taxable years ending after December 31, 1975.

"(2) Obligations of foreign governments.—The amendments made by subsection (a) [adding subsec. (f) of this section and redesignating former subsec. (f) as (g)] shall not apply to losses on the sale, exchange, or other disposition of bonds, notes, or other evidences of indebtedness issued before May 14, 1976, by a foreign government or instrumentality thereof for the acquisition of property located in that country or stock of a corporation (created or organized in or under the laws of that foreign country) or indebtedness of such corporation.

"(3) Substantial worthlessness before enactment.—The amendments made by subsection (a) [adding subsec. (f) of this section and redesignating former subsec. (f) as (g)] shall not apply to losses incurred on the loss from stock or indebtedness of a corporation in which the taxpayer owned at least 10 percent of the voting stock and which has sustained losses in 3 out of the last 5 taxable years beginning before January 1, 1976, which has sustained an overall loss for those 5 years, and with respect to which the taxpayer has terminated or will terminate all operations by reason of sale, liquidation, or other disposition before January 1, 1977, of such corporation or its assets.

"(4) Limitation based on deficit in earnings and profits.—If paragraph (3) would apply to a taxpayer but for the fact that the loss is sustained after December 31, 1976, and if the loss is sustained in a taxable year beginning before January 1, 1979, the amendments made by subsection (a) [adding subsec. (f) of this section and redesignating former subsec. (f) as (g)] shall not apply to such loss to the extent that there was on December 31, 1975, a deficit in earnings and profits in the corporation from which the loss arose. For purposes of the preceding sentence, there shall be taken into account only earnings and profits of the corporation which (A) were accumulated in taxable years of the corporation beginning after December 31, 1962, and during the period in which the stock of such corporation from which the loss arose was held by the taxpayer and (B) are attributable to such stock.

"(5) Foreign oil related losses.—The amendment made by subsection (a) [adding subsec. (f) of this section and redesignating former subsec. (f) as (g)] shall apply to foreign oil related losses sustained in taxable years ending after December 31, 1975.

"(6) Recapture of possession losses during transitional period where taxpayer is on a per-country basis.—

"(A) Application of paragraph.—This paragraph shall apply if—

"(i) the taxpayer sustained a loss in a possession of the United States in a taxable year beginning after December 31, 1975, and before January 1, 1979,

"(ii) such loss is attributable to a trade or business engaged in by the taxpayer in such possession on January 1, 1976, and

"(iii) the taxpayer chooses to have the benefits of subpart A of part III of subchapter N apply for such taxable year and section 904(a)(1) of the Internal Revenue Code of 1954 (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year.

"(B) No recapture during transition period.—In any case to which this paragraph applies, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979, section 904(f) of the Internal Revenue Code of 1954 shall not apply with respect to the loss described in subparagraph (A)(i).

"(C) Recapture of loss after the transition period.—In any case to which this paragraph applies—

"(i) for purposes of determining the liability for tax of the taxpayer for taxable years beginning after December 31, 1978, section 904(f) of the Internal Revenue Code of 1954 [subsec. (f) of this section] shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of section 904(a)(1) of such Code (as in effect before the enactment of this Act [Oct. 4, 1976]); but

"(ii) in the case of any taxpayer and any possession, the aggregate amount to which such section 904(f) applies by reason of clause (i) shall not exceed the sum of the net incomes of all affiliated corporations from such possession for taxable years of such affiliated corporations beginning after December 31, 1975, and before January 1, 1979.

"(D) Taxpayers not engaged in trade on business on January 1, 1976.—In any case to which this paragraph applies but for the fact that the taxpayer was not engaged in a trade or business in such possession on January 1, 1976, for purposes of determining the liability for tax of the taxpayer for taxable years beginning before January 1, 1979; if section 904(a)(1) of such Code [subsec. (a)(1) of this section] (as in effect before the enactment of this Act [Oct. 4, 1976]) applies with respect to such taxable year, the provisions of section 904(f) of such Code shall be applied with respect to the loss described in subparagraph (A)(i) under the principles of such section 904(a)(1).

"(E) Affiliated corporation defined.—For purposes of subparagraph (C)(ii), the term 'affiliated corporation' means a corporation which, for the taxable year for which the net income is being determined, was not a member of the same affiliated group (within the meaning of section 1504 of the Internal Revenue Code of 1954) as the taxpayer but would have been a member of such group but for the application of subsection (b) of such section 1504."

* * * * *

Section Referred to in Other Sections

This section is referred to in sections 55, 383, 667, 841, 901, 906, 907, 936, 960, 6038, 6501 of this title.

§ 905. Applicable rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 6040, 6213, 6501, 6504 of this title.

§ 906. Nonresident alien individuals and foreign corporations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 841, 874, 882, 901 of this title.

§ 907. Special rules in case of foreign oil and gas income

(a) Reduction in amount allowed as foreign tax under section 901

In applying section 901, the amount of any oil and gas extraction taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

(1) the amount of the foreign oil and gas extraction income for the taxable year,

(2) multiplied by—

(A) in the case of a corporation, the percentage which is equal to the highest rate of tax specified under section 11(b), or

(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income.

(b) Application of section 904 limitation

The provisions of section 904 shall be applied separately with respect to—

(1) foreign oil related income, and

(2) other taxable income.

[See main edition for text of (c) to (g)]

(As amended Pub. L. 95-600, title III, § 301(b)(14), title VII, § 701(u)(8)(A), (B), Nov. 6, 1978, 92 Stat. 2822, 2916.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-600, §§ 301(b)(14), 701(u)(8)(A), designated existing provisions as subpar. (A) and, as so designated, added applicability to corporations and generally reworked applicable formula, and added subpar. (B).

Subsec. (b). Pub. L. 95-600, § 701(u)(8)(B), substituted provisions relating to applicability of section 904 separately to foreign oil related income and other taxable income for provisions relating to applicability of section 904 to corporations and other taxpayers.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2) by section 301(b)(14) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Section 701(u)(8)(D) of Pub. L. 95-600 provided that:

"(i) The amendments made by this paragraph [amending subsecs. (a) and (b) of this section and section 904(f)(4) of this title] shall apply, in the case of individuals, to taxable years ending after December 31, 1974, and, in the case of corporations, to taxable years ending after December 31, 1976.

"(ii) In the case of any taxable year ending after December 31, 1975, with respect to foreign oil related income (within the meaning of section 907(c) of the Internal Revenue Code of 1954), the overall limitation provided by section 904(a)(2) of such Code shall apply and the per-country limitation provided by section 904(a)(1) of such Code shall not apply."

TAX CREDIT FOR PRODUCTION-SHARING CONTRACTS

Section 1035(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, §§ 701(u)(9), 703(h)(1), Nov. 6, 1978, 92 Stat. 2916, 2940, provided that:

* * * * *

"2. The amounts specified in paragraph (1) shall not exceed the lesser of—

"(A) the product of the foreign oil and gas extraction income (as defined in section 907(c) of such Code) with respect to all such production-sharing contracts multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code, or

"(B) the excess of the total amount of foreign oil and gas extraction income (as so defined) for the taxable year multiplied by the sum of the normal tax rate and the surtax rate for the taxable year specified in section 11 of such Code over the amount of any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid) without regard to paragraph (1) during the taxable year with respect to foreign oil and gas extraction income.

"(3) The production-sharing contracts taken into account for purposes of paragraph (1) shall be those contracts which were entered into before April 8, 1976, for the sharing of foreign oil and gas production with a foreign government (or an entity owned by such government) with respect to which amounts claimed as taxes paid or accrued to such foreign government for taxable years beginning before June 30, 1976, will not be disallowed as taxes. A contract described in the preceding sentence shall be taken into account under paragraph (1) only with respect to amounts (A) paid or accrued to the foreign government before January 1, 1978, and (B) attributable to income earned before such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 904, 6501 of this title.

§ 908. Reduction of credit for participation in or cooperation with an international boycott

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 999 of this title.

SUBPART B—EARNED INCOME OF CITIZENS OR RESIDENTS OF UNITED STATES

Sec.

911. Income earned by individuals in certain camps.

913. Deduction for certain expenses of living abroad.

AMENDMENTS

1978—Pub. L. 95-615, title II, §§ 202(f)(2), (3), 203(c), Nov. 8, 1978, 92 Stat. 3100, 3106, inserted in subpart heading "or Residents" following "Citizens", substituted in item 911 "Income earned by individuals in certain camps" for "Earned income from sources without the United States", and added item 913.

§ 911. Income earned by individuals in certain camps

(a) General rule

In the case of an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, the following items shall not be included in gross

income and shall be exempt from taxation under this subtitle:

(1) Bona fide resident of foreign country

If such individual is described in section 913(a)(1), amounts received from sources within a foreign country or countries (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during the period of bona fide residence. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

(2) Presence in foreign country for 17 months

If such individual is described in section 913(a)(2), amounts received from sources within qualified foreign countries (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during the 18-month period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

An individual shall not be allowed as a deduction from his gross income or as a credit against the tax imposed by this chapter any credit for the amount of taxes paid or accrued to a foreign country or possession of the United States, to the extent that such deduction or credit is properly allocable to or chargeable against amounts excluded from gross income under this subsection, other than the deductions allowed by sections[1] 217 (relating to moving expenses)

[See main edition for text of (b)]

(c) Special rules

For purposes of computing the amount excludable under subsection (a), the following rules shall apply:

(1) Limitations on amount of exclusion

(A) In general

The amount excluded from the gross income of an individual under subsection (a) for any taxable year shall not exceed an amount which shall be computed on a daily basis at an annual rate of $20,000 for days during which he resides in a camp.

(B) Camp

For purposes of this section, an individual shall not be considered to reside in a camp because of his employment unless the camp constitutes substandard lodging which is—

(i) provided by or on behalf of the employer for the convenience of the employer because the place at which such individual renders services is in a remote area where satisfactory housing is not available on the open market,

(ii) located, as near as practicable, in the vicinity of the place at which such individual renders services, and

(iii) furnished in a common area (or enclave) which is not available to the public and which normally accommodates 10 or more employees.

(C) Hardship area

For purposes of this section, the term "hardship area" has the same meaning as in section 913(h).

[(D) Repealed]

[See main edition for text of (2) to (6)]

(7) Business premises of the employer

In the case of an individual residing in a camp who elects the exclusion provided in this section for a taxable year, the camp shall be considered to be part of the business premises of the employer for purposes of section 119 for such taxable year.

[(8) Repealed. Pub. L. 95–615, title II, § 202(e), Nov. 8, 1978, 92 Stat. 3100]

(d) Section not to apply

An individual entitled to the benefits of this section for a taxable year may elect, in such manner and at such time as shall be prescribed by the Secretary, not to have the provisions of this section apply for the taxable year.

(e) Cross reference

(1) For administrative and penal provisions relating to the exclusion provided for in this section, see sections 6001, 6011, 6012(e), and the other provisions of subtitle F.

(2) For elections as to treatment of income subject to foreign community property laws, see section 981.

[(f) Redesignated (e)]

(As amended May 23, 1977, Pub. L. 95–30, title I, § 102(b)(12), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95–600, title IV, § 401(b)(4), title VII, §§ 701(u)(10)(A), 703(e), 92 Stat. 2867, 2917, 2939; Nov. 8, 1978, Pub. L. 95–615, title II, § 202(a)–(f)(1), 92 Stat. 3098, 3099, 3100.)

AMENDMENTS

1978—Pub. L. 95–615, § 202(f)(1), substituted in section heading "Income earned by individuals in certain camps" for "Earned income from sources without the United States".

Subsec. (a). Pub. L. 95–615, § 202(a), in the provisions preceding par. (1) added reference to an individual described in section 913(a) who, because of his employment, resides in a camp located in a hardship area, in par. (1) substituted reference to amounts received from sources within a foreign country or countries for reference to amounts received from sources without the United States, in par. (2) substituted reference to amounts received from sources within qualified foreign countries for reference to amounts received from sources without the United States, and in the provisions following par. (2) struck out "any deductions (other than those allowed by section 151, relating to personal exemptions)," following "deduction from his gross income" and added ", other than the deductions allowed by sections 217 (relating to moving expenses)" following "subsection".

Pub. L. 95–600, § 701(u)(10)(A), added provisions setting forth formula for determining amount of reduction of taxes, and struck out provisions relating to the credit against taxes.

Subsec. (c)(1)(A). Pub. L. 95–615, § 202(b), substituted "The amount excluded" for "Except as provided in subparagraphs (B) and (C), the amount excluded" and "an annual rate of $20,000 for days during which he resides in a camp" for "an annual rate of $15,000".

Subsec. (c)(1)(B). Pub. L. 95–615, § 202(b), substituted provisions relating to conditions upon which an individual will be considered to reside in a camp because of his employment for provisions which related to the amount excluded from the gross income of an individual performing qualified charitable services.

[1] So in original. Probably should be "section".

Subsec. (c)(1)(C). Pub. L. 95-615, § 202(b), substituted provisions relating to the definition of "hardship area" for provisions which related to the amount excluded from the gross income of an individual performing both qualified charitable services and other services.

Subsec. (c)(1)(D). Pub. L. 95-615, § 202(b), struck out subsec. (c)(1)(D) which defined "qualified charitable services".

Subsec. (c)(7). Pub. L. 95-615, § 202(c), added subsec. (c)(7).

Pub. L. 95-600, § 703(e), redesignated former subsec. (c)(8) as (c)(7). Such subsec. (c)(8) was subsequently repealed by section 202(e) of Pub. L. 95-615 without taking into account the redesignation of subsec. (c)(8) as (c)(7) by Pub. L. 95-600, thereby requiring no execution of this amendment. See 1978 Amendment note for subsec. (c)(8).

Subsec. (c)(8). Pub. L. 95-615, § 202(e), struck out subsec. (c)(8), which related to the nonexclusion under subsec. (a) of any amount attributable to services performed in a foreign country or countries if such amount was received outside of the foreign country or countries where such services were performed and if one of the purposes was the avoidance of any tax imposed by such foreign country or countries on such amount.

Subsec. (d). Pub. L. 95-615, § 202(d)(1), redesignated former subsec. (e) as (d) and, in subsec. (d) as so redesignated, inserted "for the taxable year" following "section apply" and struck out provision that an election was applicable to the taxable year for which made and to all subsequent taxable years. Former subsec. (d), which related to the computation of tax imposed by section 1 or section 1201 if an individual earned income which was excluded from gross income under subsec. (a) and which defined "net taxable income" and "net excluded earned income", was struck out.

Subsec. (d)(1). Pub. L. 95-600, § 401(b)(4), struck out provisions respecting applicability of section 1201 of this title.

Subsec. (e). Pub. L. 95-615, § 202(d)(1), (2), redesignated former subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 95-615, § 202(d)(2), redesignated former subsec. (f) as (e).

1977—Subsec. (d)(1)(B). Pub. L. 95-30 substituted "on the sum of (i) the amount of net excluded earned income, and (ii) the zero bracket amount" for "on the amount of net excluded earned income".

Effective Date of 1978 Amendment

Section 701(u)(10)(B) of Pub. L. 95-600 provided that: "The amendment made by subparagraph (A) [amending subsec. (a) of this section] shall apply to taxable years beginning after December 31, 1976."

Amendment of subsec. (c)(7) of this section by section 703(e) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Amendment of subsec. (d)(1) by section 401(b)(4) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1201 of this title.

Effective Date of 1978 Amendment; Election of Prior Law

Section 209 of Pub. L. 95-615 provided that:

"(a) General rule.—Except as provided in subsections (b) and (c) the amendments made by this title [see section 201(a) of Pub. L. 95-615 set out as a Short Title of 1978 Amendment note under section 1 of this title] shall apply to taxable years beginning after December 31, 1977.

(b) Wage withholding.—The amendment made by section 207(a) [amending section 3401 of this title] shall apply to remuneration paid after the date of the enactment of this Act. [Nov. 8, 1978].

"(c) Election of prior law.—

"(1) A taxpayer may elect not to have the amendments made by this title [see section 201(a) of Pub. L. 95-615, set out as a Short Title of 1978 Amendment note under section 1 of this title] apply with respect to any taxable year beginning after December 31, 1977, and before January 1, 1979.

"(2) An election under this subsection shall be filed with a taxpayer's timely filed return for the first taxable year beginning after December 31, 1977."

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

Effective Date of 1976 Amendment

Section 1011(d) of Pub. L. 94-455, as amended by Pub. L. 95-30, title III, § 302, May 23, 1977, 91 Stat. 152; Pub. L. 95-615, § 4(a), Nov. 8, 1978, 92 Stat. 3097, provided that: "The amendments made by this section [amending subsecs. (a), (c)(1), (8), (d) to (f) of this section and section 36 of this title] shall apply to taxable years beginning after December 31, 1977."

Individuals for Whom Unused Zero Bracket Amount Computation Is Provided for Taxable Years Beginning in 1977

Section 4(b) of Pub. L. 95-615 provided that:

"If for any taxable year beginning in 1977—

"(1) an individual is entitled to the benefits of section 911 of the Internal Revenue Code of 1954, and

"(2) such individual chooses to take to any extent the benefits of section 901 of such Code,

then such individual shall be treated for such taxable year as an individual for whom an unused zero bracket amount computation is provided by section 63(e) of such Code."

Reports to Congressional Committees; Information from Federal Agencies

Section 208 of Pub. L. 95-615 provided that:

"(a) General rule.—As soon as practicable after the close of the calendar year 1979 and after the close of each second calendar year thereafter, the Secretary of the Treasury shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate setting forth with respect to the preceding 2 calendar years—

"(1) the number, country of residence, and other pertinent characteristics of persons claiming the benefits of sections 911, 912, and 913 of the Internal Revenue Code of 1954,

"(2) the revenue cost and economic effects of the provisions of such sections 911, 912, and 913, and

"(3) a detailed description of the manner in which the provisions of such sections 911, 912, and 913 have been administered during the preceding 2 calendar years.

"(b) Information from federal agencies.—Each agency of the Federal Government which pays allowances excludable from gross income under section 912 of such Code shall furnish to the Secretary of the Treasury such information as he determines to be necessary to carry out his responsibility under subsection (a)."

Section Referred to in Other Sections

This section is referred to in sections 3, 37, 43, 63, 72, 105, 220, 403, 410, 415, 913, 1302, 1303, 1304, 1348, 1402, 3401, 6012, 6091 of this title; title 29 section 1322; title 42 section 411.

§ 912. Exemption for certain allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6011 of this title.

§ 913. Deduction for certain expenses of living abroad

(a) Allowance of deduction

In the case of an individual who is—

(1) Bona fide resident of foreign country

A citizen of the United States and who establishes to the satisfaction of the Secretary that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, or

(2) Presence in foreign country for 17 months

A citizen or resident of the United States and who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period,

there shall be allowed as a deduction for such taxable year or for any taxable year which contains part of such period, the sum of the amounts set forth in subsection (b).

(b) Amounts

The amounts referred to in this subsection are:

(1) The qualified cost-of-living differential.

(2) The qualified housing expenses.

(3) The qualified schooling expenses.

(4) The qualified home leave travel expenses.

(5) The qualified hardship area deduction.

(c) Deduction not to exceed net foreign source earned income

(1) In general

The deduction allowed by subsection (a) to any individual for the taxable year shall not exceed—

(A) such individual's earned income from sources outside the United States for the portion of the taxable year in which such individual's tax home is in a foreign country, reduced by

(B) the sum of—

(i) any earned income referred to in subparagraph (A) which is excluded from gross income under section 119, and

(ii) the allocable deductions.

(2) Allocable deductions defined

For purposes of paragraph (1)(B)(ii), the term "allocable deductions" means the deductions properly allocable to or chargeable against the earned income referred to in paragraph (1)(A), other than the deduction allowed by this section.

(d) Qualified cost-of-living differential

(1) In general

For purposes of this section, the term "qualified cost-of-living differential" means a reasonable amount determined under tables (or under another method) prescribed by the Secretary establishing the amount (if any) by which the general cost of living in the foreign place in which the individual's tax home is located exceeds the general cost of living for the metropolitan area in the continental United States (excluding Alaska) having the highest general cost of living. The tables (or other methods) so prescribed shall be revised at least once during each calendar year.

(2) Special rules

For purposes of paragraph (1)—

(A) Computation on daily basis

The differential shall be computed on a daily basis for the period during which the individual's tax home is in a foreign country.

(B) Differential to be based on daily living expenses

An individual's cost-of-living differential shall be determined by reference to reasonable daily living expenses (excluding housing and schooling expenses).

(C) Basis of comparison

The differential prescribed for any foreign place—

(i) shall vary depending on the composition of the family (spouse and dependents) residing with the individual (or at a qualified second household), and

(ii) shall reflect the costs of living of a family whose income is equal to the salary of an employee of the United States who is compensated at a rate equal to the annual rate paid for step 1 of grade GS-14.

(D) State department's index may be taken into account

The Secretary, in determining the qualified cost-of-living differential for any foreign place, may take into account the Department of State's Local Index of Living Costs Abroad as it relates to such place.

(E) No differential for periods during which individual is eligible under section 119

Except as provided in subsection (i)(1)(A)(ii) an individual shall not be entitled to any qualified cost-of-living differential for any period for which such individual's meals and lodging are excluded from gross income under section 119.

(e) Qualified housing expenses

(1) In general

For purposes of this section, the term "qualified housing expenses" means the excess of—

(A) the individual's housing expenses, over

(B) the individual's base housing amount.

(2) Housing expenses

(A) In general

For purposes of paragraph (1), the term "housing expenses" means the reasonable expenses paid or incurred during the taxable year by or on behalf of the individual for housing for the individual (and, if they reside with him, for his spouse and dependents) in a foreign country. Such term—

(i) except as provided in clause (ii), includes expenses attributable to the housing (such as utilities and insurance), and

(ii) does not include interest and taxes of the kind deductible under section 163 or 164 or any amount allowable as a deduction under section 216(a).

(B) Portion which is lavish or extravagant not allowed

For purposes of subparagraph (A), housing expenses shall not be treated as reasonable to the extent such expenses are lavish or extravagant under the circumstances.

(3) Base housing amount

For purposes of paragraph (1)—

(A) In general

The term "base housing amount" means 20 percent of the excess of—

(i) the individual's earned income (reduced by the deductions properly allocable to or chargeable against such earned income (other than the deduction allowed by this section)), over

(ii) the sum of—

(I) the housing expenses taken into account under paragraph (1)(A) of this subsection,

(II) the qualified cost-of-living differential,

(III) the qualified school expenses,

(IV) the qualified home leave travel expenses, and

(V) the qualified hardship area deduction.

(B) Base housing amount to be zero in certain cases

If, because of adverse living conditions, the individual maintains a household for his spouse and dependents at a foreign place other than his tax home which is in addition to the household he maintains as his tax home, and if his tax home is in a hardship area as defined in subsection (h), the base housing amount for the household maintained at his tax home shall be zero.

(4) Periods taken into account

(A) In general

The expenses taken into account under this subsection shall be only those which are attributable to housing during periods for which—

(i) the individual's tax home is in a foreign country, and

(ii) except as provided in subsection (i)(1)(B)(iii), the value of the individual's housing is not excluded under section 119.

(B) Determination of base housing amount

The base housing amount shall be determined for the periods referred to in subparagraph (A) (as modified by subsection (i)(1)(B)(iii)).

(5) Only one house per period

If, but for this paragraph, housing expenses for any individual would be taken into account under paragraph (2) of subsection (b) with respect to more than one abode for any period, only housing expenses with respect to that abode which bears the closest relationship to the individual's tax home shall be taken into account under such paragraph (2) for such period.

(f) Qualified schooling expenses

(1) In general

For purposes of this section, the term "qualified schooling expenses" means the reasonable schooling expenses paid or incurred by or on behalf of the individual during the taxable year for the education of each dependent of the individual at the elementary or secondary level. For purposes of the preceding sentence, the elementary or secondary level means education which is the equivalent of education from the kindergarten through the 12th grade in a United States-type school.

(2) Expenses included

For purposes of paragraph (1), the term "schooling expenses" means the cost of tuition, fees, books, and local transportation and of other expenses required by the school. Except as provided in paragraph (3), such term does not include expenses of room and board or expenses of transportation other than local transportation.

(3) Room, board, and travel allowed in certain cases

If an adequate United States-type school is not available within a reasonable commuting distance of the individual's tax home, the expenses of room and board of the dependent and the expenses of the transportation of the dependent each school year between such tax home and the location of the school shall be treated as schooling expenses.

(4) Determination of reasonable expenses

If—

(A) there is an adequate United States-type school available within a reasonable commuting distance of the individual's tax home, and

(B) the dependent attends a school other than the school referred to in subparagraph (A),

then the amount taken into account under paragraph (2) shall not exceed the aggregate amount which would be charged for the period by the school referred to in subparagraph (A).

(5) Period taken into account

An amount shall be taken into account as a qualified schooling expense only if it is attributable to education for a period during which the individual's tax home is in a foreign country.

(g) Qualified home leave travel expenses

(1) In general

For purposes of this section, the term "qualified home leave travel expenses" means the reasonable amounts paid or incurred by or on behalf of an individual for the transportation of such individual, his spouse, and each dependent from the location of the individual's tax home outside the United States to—

(A) the individual's present (or, if none, most recent) principal residence in the United States, or

(B) if subparagraph (A) does not apply to the individual, the nearest port of entry in the continental United States (excluding Alaska)

and return.

(2) One trip per 12-month period abroad

Amounts may be taken into account under paragraph (4) of subsection (b) only with respect to one round trip per person for each continuous period of 12 months for which the individual's tax home is in a foreign country.

(h) Qualified hardship area deduction

(1) In general

For purposes of this section, the term "qualified hardship area deduction" means an amount computed on a daily basis at an annual rate of $5,000 for days during which the individual's tax home is in a hardship area.

(2) Hardship area defined

For purposes of this section, the term "hardship area" means any foreign place designated by the Secretary of State as a hardship post where extraordinarily difficult living conditions, notably unhealthful conditions, or excessive physical hardships exist and for which a post differential of 15 percent or more—

(A) is provided under section 5925 of title 5, United States Code, or

(B) would be so provided if officers and employees of the Government of the United States were present at that place.

(i) Special rules where individual maintains separate household for spouse and dependents because of adverse living conditions at tax home

(1) In general

For any period during which an individual maintains a qualified second household—

(A) Qualified cost-of-living differential

(i) Allowance determined by reference to location of qualified second household

Paragraph (1) of subsection (d) shall be applied by substituting "the qualified second household" for "the individual's tax home".

(ii) Disregard of section 119 rule

Subparagraph (E) of subsection (d)(2) shall not apply with respect to the spouse and dependents.

(B) Qualified housing expenses

(i) Expenses with respect to qualified second household taken into account

For purposes of subsection (e), the expenses for housing of an individual's spouse and dependents at the qualified second household shall be treated as housing expenses if they would meet the requirements of subsection (e)(2) if the individual resided at such household.

(ii) Separate application of subsection (e)

Subsection (e) shall be applied separately with respect to the housing expenses for the qualified second household; except that, in determining the base housing amount, the housing expenses (if any) of the individual for housing at his tax home shall also be taken into account under subsection (e)(3)(A)(ii).

(iii) Certain rules not to apply

Paragraphs (4)(A)(ii) and (5) of subsection (e) shall not apply with respect to housing expenses for the qualified second household.

(C) Requirement that spouse and dependents reside with individual for purposes of schooling and home leave

(i) In general

The requirement of subsection (j)(3) that the dependent or spouse of the individual (as the case may be) reside with the individual at his tax home shall be treated as met if such spouse or dependent resides at the qualified second household.

(ii) Substitution of household for tax home

In any case where clause (i) applies, paragraphs (3) and (4) of subsection (f), and paragraph (1) of subsection (g), shall be applied with respect to amounts paid or incurred for the spouse or dependent by substituting the location of the qualified second household for the individual's tax home.

(2) Definition of qualified second household

For purposes of this section, the term "qualified second household" means any household maintained in a foreign country by an individual for the spouse and dependents of such individual at a place other than the tax home of such individual because of adverse living conditions at the individual's tax home.

(j) Other definitions and special rules

(1) Definitions

For purposes of this section—

(A) Earned income

The term "earned income" has the meaning given to such term by section 911(b) (determined with the rules set forth in paragraphs (2), (3), (4), and (5) of section 911(c)), except that such term does not include amounts paid by the United States or any agency thereof.

(B) Tax home

The term "tax home" means, with respect to any individual, such individual's home for purposes of section 162(a)(2) (relating to traveling expenses while away from home). An individual shall not be treated as having a tax home in a foreign country for any period for which his abode is within the United States.

(C) Residence at tax home

A household or residence shall be treated as at the tax home of an individual if such household or residence is within a reasonable commuting distance of such tax home.

(D) Adverse living conditions

The term "adverse living conditions" means living conditions which are dangerous, unhealthful, or otherwise adverse.

(E) United States

The term "United States", when used in a geographical sense, includes the possessions

of the United States and the areas set forth in paragraph (1) of section 638 and so much of paragraph (2) of section 638 as relates to the possessions of the United States.

(2) Limitation to coach or economy fare

The amount taken into account under this section for any transportation by air shall not exceed the lowest coach or economy rate at the time of such transportation charged by a commercial airline for such transportation during the calendar month in which such transportation is furnished. If there is no such coach or economy rate or if the individual is required to use first-class transportation because of a physical impairment, the preceding sentence shall be applied by substituting "first-class" for "coach or economy".

(3) Requirement that spouse and dependents reside with individual for purposes of schooling and home leave

Except as provided in subsection (i)(1)(C)(i), amounts may be taken into account under subsection (f) with respect to any dependent of the individual, and under subsection (g) with respect to the individual's spouse or any dependent of the individual, only for the period that such spouse or dependent (as the case may be) resides with the individual at his tax home.

(k) Certain double benefits disallowed

An individual shall not be allowed—

(1) as a deduction (other than the deduction under section 151),

(2) as an exclusion, or

(3) as a credit under section 44A (relating to household and dependent care services),

any amount to the extent that such amount is taken into account under subsection (d), (e), (f), or (g).

(l) Application with section 911

An individual shall not be allowed the deduction allowed by subsection (a) for any taxable year with respect to which he elects the exclusion provided in section 911.

(m) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations providing rules—

(1) for cases where a husband and wife each have earned income from sources outside the United States, and

(2) for married individuals filing separate returns.

(Added Pub. L. 95-615, title II, § 203(a), Nov. 8, 1978, 92 Stat. 3100.)

REFERENCES IN TEXT

Grade GS-14, referred to in subsec. (d)(2)(C)(ii), is GS-14 of the General Schedule, which is set out as a note under section 5332 of Title 5, Government Organization and Employees.

EFFECTIVE DATE; ELECTION OF PRIOR LAW

Section applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 911, 1034, 3401, 6091 of this title.

SUBPART C—WESTERN HEMISPHERE TRADE CORPORATIONS

§ 922. Special deduction

(a) General rule

In the case of a Western Hemisphere trade corporation there shall be allowed as a deduction in computing taxable income an amount computed as follows—

(1) First determine the taxable income of such corporation computed without regard to this section.

(2) Then multiply the amount determined under paragraph (1) by the fraction—

(A) the numerator of which is 14 percent, and

(B) the denominator of which is that percentage which equals the highest rate of tax specified in section 11(b).

No deduction shall be allowed under this section to a corporation for a taxable year for which it is a DISC or in which it owns at any time stock in a DISC or former DISC (as defined in section 992(a)).

[*See main edition for text of* (b)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(15), 92 Stat. 2822.)

AMENDMENTS

1978—Subsec. (a)(2)(B). Pub. L. 95-600 substituted "the highest rate of tax specified in section 11(b)" for "the sum of the normal tax rate and the surtax rate for the taxable year prescribed by section 11".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2)(B) of this section by section 301(b)(15) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note note under section 11 of this title.

SUBPART D—POSSESSIONS OF THE UNITED STATES

§ 931. Income from sources within possessions of the United States

[*See main edition for text of* (a) *to* (c)]

(d) Deductions

[*See main edition for text of* (1) *and* (2)]

[(3) Repealed. Pub. L. 95-30, title I, § 101(d)(12), May 23, 1977, 91 Stat. 134]

[*See main edition for text of* (e) *to* (h)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(12), 91 Stat. 134.)

AMENDMENTS

1977—Subsec. (d)(3). Pub. L. 95-30 struck out subsec. (d)(3) which made a cross reference to section 142(b)(2) for disallowance of the standard deduction.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a)

of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43, 48, 63, 153, 901, 936, 957, 1302, 1402, 1504, 6012, 6091 of this title; title 42 section 411; title 48 section 1421i.

§ 936. Puerto Rico and possession tax credit

(a) Allowance of credit

(1) In general

Except as provided in paragraph (3), if a domestic corporation elects the application of this section and if the conditions of both subparagraph (A) and subparagraph (B) of paragraph (2) are satisfied, there shall be allowed as a credit against the tax imposed by this chapter an amount equal to the portion of the tax which is attributable to the sum of—

(A) the taxable income, from sources without the United States, from—

(i) the active conduct of a trade or business within a possession of the United States, or

(ii) the sale or exchange of substantially all of the assets used by the taxpayer in the active conduct of such trade or business, and

(B) the qualified possession source investment income.

(2) Conditions which must be satisfied

The conditions referred to in paragraph (1) are:

(A) 3-year period

If 80 percent or more of the gross income of such domestic corporation for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States (determined without regard to section 904(f)); and

(B) Trade or business

If 50 percent or more of the gross income of such domestic corporation for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States.

(3) Credit not allowed against certain taxes

The credit provided by paragraph (1) shall not be allowed against the tax imposed by—

(A) section 56 (relating to minimum tax),

(B) section 531 (relating to the tax on accumulated earnings),

(C) section 541 (relating to personal holding company tax), or

[(D) Repealed. Pub. L. 94-455, title XIX, § 1901(b)(37)(B), Oct. 4, 1976, 90 Stat. 1803]

(E) section 1351 (relating to recoveries of foreign expropriation losses).

[See main edition for text of (b) and (c)]

(d) Definitions and special rules

For purposes of this section—

[See main edition for text of (1) and (2)]

(3) Carryover basis property

(A) In general

Income from the sale or exchange of any asset the basis of which is determined in whole or in part by reference to its basis in the hands of another person shall not be treated as income described in subparagraph (A) or (B) of subsection (a)(1).

(B) Exception for possessions corporations, etc.

For purposes of subparagraph (A), the holding of any asset by another person shall not be taken into account if throughout the period for which such asset was held by such person section 931, this section, or section 957(c) applied to such person.

[See main edition for text of (e) to (g)]

(As amended Pub. L. 95-600, title VII, § 701(u)(11)(A), (B), Nov. 6, 1978, 92 Stat. 2917.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 701(u)(11)(A), reworked provisions of par. (1) into introductory material, substituting in such material reference to par. (3) for reference to par. (2), and subpars. (A) and (B), added introductory material of par. (2), redesignated former subpars. (A) and (B) of par. (1) as subpars. (A) and (B) of par. (2), and redesignated former par. (2) as (3).

Subsec. (d). Pub. L. 95-600, § 701(u)(11)(B), substituted in catchline "Definitions and special rules" for "Definitions" and added par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(11)(C) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [amending subsecs. (a) and (d) of this section] shall apply as if included in section 936 of the Internal Revenue Code of 1954 at the time of its addition by section 1051(b) of the Tax Reform Act of 1976 [Oct. 4, 1976]."

[SUBPART E—REPEALED]

[§§ 941 to 943. Repealed. Pub. L. 94-455, title X, § 1053(c), Oct. 4, 1976, 90 Stat. 1648]

Section 941, acts Aug. 16, 1954, ch. 736, 68A Stat. 293; Oct. 4, 1976, Pub. L. 94-455, title X, § 1053(a), title XIX, § 1906(b)(1)(A), 90 Stat. 1648, 1834, set forth provisions authorizing the special deduction for China Trade Act corporations.

Section 942, act Aug. 16, 1954, ch. 736, 68A Stat. 294, disallowed the foreign tax credit authorized by section 901 to any corporation organized under the China Trade Act.

Section 943, acts Aug. 16, 1954, ch. 736, 68A Stat. 294; Oct. 4, 1976, Pub. L. 94-455, title X, § 1053(b), 90 Stat. 1648, set forth provisions relating to exclusion from gross income of residents of Formosa or Hong Kong of amounts distributed as dividends by China Trade Act corporations.

EFFECTIVE DATE OF REPEAL

Sections repealed effective with respect to taxable years beginning after Dec. 31, 1977, see section 1053(e) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 116 of this title.

SUBPART F—CONTROLLED FOREIGN CORPORATIONS

§ 957. Controlled foreign corporations; United States persons

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 901, 936, 951, 958, 970, 971, 1248 of this title.

§ 962. Election by individuals to be subject to tax at corporate rates

[See main edition for text of (a) and (b)]

(c) Pro ration of each section 11 bracket amount

For purposes of applying subsection (a)(1), the amount in each taxable income bracket in the tax table in section 11(b) shall not exceed an amount which bears the same ratio to such bracket amount as the amount included in the gross income of the United States shareholder under section 951(a) for the taxable year bears to such shareholder's pro rata share of the earnings and profits for the taxable year of all controlled foreign corporations with respect to which such shareholder includes any amount in gross income under section 951(a).

[See main edition for text of (d)]

(As amended Pub. L. 95-600, title III, § 301(b)(16), Nov. 6, 1978, 92 Stat. 2822.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600 substituted provisions relating to the pro ration of each section 11 bracket amount for provisions relating to the surtax exemption.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (c) by section 301(b)(16) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

§ 992. Requirements of a Domestic International Sales Corporation

REFERENCES IN TEXT

Section 941, referred to in subsec. (d)(6), was repealed by Pub. L. 94-455, title X, § 1053(c), Oct. 4, 1976, 90 Stat. 1648.

SUBPART B—TREATMENT OF DISTRIBUTIONS TO SHAREHOLDERS

§ 995. Taxation of DISC income to shareholders

[See main edition for text of (a)]

(b) Deemed distributions

(1) Distributions in qualified years

A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

[See main edition for text of (A) to (F)]

(G) the amount of foreign investment attributable to producer's loans (as defined in subsection (d)) of a DISC for the taxable year.

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

[See main edition for text of (2) and (3)]

(c) Gain on disposition of stock in a DISC

(1) In general

If—

[See main edition for text of (A) to (C)]

Subparagraph (C) shall not apply if the person receiving the stock in the disposition has a holding period for the stock which includes the period for which the stock was held by the shareholder disposing of such stock.

[See main edition for text of (2); (d) to (g)]

(As amended Pub. L. 95-600, title VII, §§ 701(u)(12)(B), 703(i)(1), (2), Nov. 6, 1978, 92 Stat. 2918, 2940.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 703(i)(1), (2), substituted in subpar. (G) "subsection (d)" for "subsection (D)" and in provisions following subpar. (G) "income" for "gross income (taxable income in the case of subparagraph (D))" and "subparagraph (G)" for "subparagraph (E)".

Subsec. (c)(1). Pub. L. 95-600, § 701(u)(12)(B), added provision relating to application of subpar. (C).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(1) and (b)(1)(G) by section 703(i)(1), (2), of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 701(u)(12)(C) of Pub. L. 95-600 provided that: "The amendment made by subparagraph (B) [amending subsec. (c)(1) of this section] shall apply to dispositions made after December 31, 1976, in taxable years ending after such date."

EFFECTIVE DATE OF 1976 AMENDMENT

* * * * *

Section 1101(g)(4) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 701(u)(12)(A), Nov. 6, 1978, 92 Stat. 2918, provided that: "The amendments made by subsection (d) [amending subsec. (c) of this section and section 751(c) of this title] shall apply to sales, exchanges, or other dispositions after December 31, 1976, in taxable years ending after such date."

PRORATION OF BASE PERIOD IN CASE OF FIXED CONTRACTS

Section 1101(g)(5) of Pub. L. 94-455 as amended by Pub. L. 95-600, title VII, § 703(i)(4), Nov. 6, 1978, 92 Stat. 2940, provided that: "For purposes of determining adjusted base period export gross receipts (under section 995(e)(3) of the Internal Revenue Code of 1954, as amended by this section), if any DISC has

export gross receipts from export property by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975, [set out as an Effective Date of 1975 Amendment note under section 993 of this title], then the export gross receipts of such DISC for the taxable years of the base period shall be increased by an amount equal to the amount of gross receipts which were excluded from export gross receipts during each taxable year of the base period by reason of the last sentence of section 995(e)(3) of such Code multiplied by a fraction, the numerator of which is the amount of the gross receipts in the taxable year which are export gross receipts by reason of paragraph (2) of section 603(b) of the Tax Reduction Act of 1975 and the denominator of which is the amount of total gross receipts which are excluded from export gross receipts in the taxable year by reason of subparagraph (C) or (D) of paragraph (2) of section 993(c) (determined without regard to paragraph (2) of section 603(b) of the Tax Reduction Act of 1975)."

§ 996. Rules for allocation in the case of distributions and losses

(a) Rules for actual distributions and certain deemed distributions

[*See main edition for text of (1)*]

(2) Qualifying distributions

Any actual distribution made pursuant to section 992(c) (relating to distributions to meet qualification requirements), and any deemed distribution pursuant to section 995(b)(1)(G) (relating to foreign investment attributable to producer's loans), shall be treated as made—

[*See main edition for text of (A) to (C)*]

In the case of any amount of any actual distribution made pursuant to section 992(c) which is required to satisfy the condition of section 992(a)(1)(A), the preceding sentence shall apply to one-half of such amount, and paragraph (1) shall apply to the remaining one-half of such amount.

[*See main edition for text of (3); (b) to (g)*]

(As amended Pub. L. 95-600, title VII, § 703(i)(3), Nov. 6, 1978, 92 Stat. 2940.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-600 substituted "section (b)(1)(G)" for "section (b)(1)(E)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2) of this section by section 703(i)(3) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

PART V—INTERNATIONAL BOYCOTT DETERMINATIONS

§ 999. Reports by taxpayers; determinations

[*See main edition for text of (a) and (b)*]

(c) International boycott factor

(1) International boycott factor

For purposes of sections 908(a), 952(a)(3), and 995(b)(1)(F)(ii), the international boycott factor is a fraction, determined under regulations prescribed by the Secretary, the numerator of which reflects the world-wide operations of a person (or, in the case of a controlled group (within the meaning of section 993(a)(3)) which includes that person, of the group) which are operations in or related to a group of countries associated in carrying out an international boycott in or with which that person or a member of that controlled group has participated or cooperated in the taxable year, and the denominator of which reflects the world-wide operations of that person or group.

(2) Specifically attributable taxes and income

If the taxpayer clearly demonstrates that the foreign taxes paid and income earned for the taxable year are attributable to specific operations, then, in lieu of applying the international boycott factor for such taxable year, the amount of the credit disallowed under section 908(a), the addition to subpart F income under section 952(a)(3), and the amount of deemed distribution under section 995(b)(1)(F)(ii) for the taxable year, if any, shall be the amount specifically attributable to the operations in which there was participation in or cooperation with an international boycott under section 999(b)(1).

[*See main edition for text of (3); (d) to (f)*]

(As amended Pub. L. 95-600, title VII, § 703(h)(2), (3), Nov. 6, 1978, 92 Stat. 2940.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95-600, § 703(h)(2), substituted "995(b)(1)(F)(ii)" for "995(b)(3)".

Subsec. (c)(2). Pub. L. 95-600, § 703(h)(3), substituted "995(b)(1)(F)(ii)" for "995(b)(1)(D)(ii)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (c)(1), (2) of this section by section 703(h)(2), (3) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Subchapter O—Gain or Loss on Disposition of Property

PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

§ 1001. Determination of amount of and recognition of gain or loss

[*See main edition for text of (a) to (d)*]

(e) Certain term interests

(1) In general

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014, 1015, or 1023 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

[*See main edition for text of (2) and (3); (f)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(c)(9), 92 Stat. 2928.)

AMENDMENTS

1978—Subsec. (e)(1). Pub. L. 95-600 inserted reference to section 1023.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (e)(1) by section 702(c)(9) of Pub. L. 95-600 to take effect as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94-455, see section 702(c)(10) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1014 of this title.

PART II—BASIC RULES OF GENERAL APPLICATION

Sec.
1023. Carryover basis for certain property acquired from a decedent dying after December 31, 1979.

AMENDMENTS

1978—Pub. L. 95-600, title V, § 515(5), Nov. 6, 1978, 92 Stat. 2884, substituted "December 31, 1979" for "December 31, 1976", in item 1023.

§ 1014. Basis of property acquired from a decedent

(a) In general

Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be—

(1) the fair market value of the property at the date of the decedent's death, or

(2) in the case of an election under either section 2032 or section 811(j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections, or

(3) in the case of an election under section 2032.1,[1] its value determined under such section.

[See main edition for text of (b) and (c)]

(d) Decedents dying after December 31, 1979

In the case of a decedent dying after December 31, 1979, the section shall not apply to any property for which a carryover basis is provided by section 1023.

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 515(1), title VII, § 702(c)(1)(A), 92 Stat. 2884, 2926.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 702(c)(1)(A), designated existing provisions as pars. (1) and (2) and added par. (3).

Subsec. (d). Pub. L. 95-600, § 515(1), substituted "December 31, 1979" for "December 31, 1976" in subsec. catchline and text.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(c)(10) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsec. (a) of this section and sections 1001(e)(1), 1023(c), (e)(2), (f)(2), (3), (g)(1), (3), (4), (h)(1), (2)(A), (3), (4), 1223(11)(A), and 2614(a) of this title] shall take effect as if included in the amendments and additions made by, and the appropriate provisions of the Tax Reform Act of 1976 [Pub. L. 94-455, Oct. 4, 1976, 90 Stat 1525]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 179, 334, 382, 551, 644, 1001, 1023, 1223, 1232, 2032A, 2614 of this title.

§ 1016. Adjustments to basis

(a) General rule

Proper adjustment in respect of the property shall in all cases be made—

[See main edition for text of (1) to (20)]

(21) to the extent provided in section 1395 in the case of stock of shareholders of a general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392; and

(21) to the extent provided in section 44C(e), in the case of property with respect to which a credit has been allowed under section 44C;

(22) to the extent provided in section 1023, relating to carryover basis for certain property acquired from a decedent dying after December 31, 1979.

[(23) Renumbered (22)]

[See main edition for text of (b)]

(c) Increase in basis in the case of certain involuntary conversions

(1) In general

If there is a complusory[1] or involuntary conversion (within the meaning of section 1033) of any property the basis of which is determined under section 1023 and an additional estate tax is imposed on such conversion under section 2032A(c), then the adjusted basis of such property shall be increased by an amount which bears the same ratio to such tax with respect to the conversion of that property as—

(A) the net appreciation in value of such property, bears to

(B) the excess of—

(i) the value of such property for purposes of chapter 11 as determined with respect to the estate of the decedent without regard to section 2032A; over

(ii) the value of such property for purposes of chapter 11 as determined with respect to the estate of the decedent with regard to section 2032A.

(2) Net appreciation in value

For purposes of this subsection, the net appreciation in value of any property shall be determined in accordance with section 1023(f)(2) except that—

(A) the adjusted basis taken into account shall be increased by any adjustment under section 1023,

(B) the fair market value of such property shall be determined without regard to section 2032A, and

(C) any net appreciation in value in excess of the amount determined under paragraph (1)(B) shall be disregarded.

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[1] So in original. Probably should be "2032".

[1] So in original. Probably should be "compulsory".

(3) Time adjustment made

Any adjustment under paragraph (1) shall be deemed to have occurred immediately before the compulsory or involuntary conversion.

(d) Reduction in basis of automobile on which gas guzzler tax was imposed

If—

(1) the taxpayer acquires any automobile with respect to which a tax was imposed by section 4064, and

(2) the use of such automobile by the taxpayer begins not more than 1 year after the date of the first sale for ultimate use of such automobile,

the basis of such automobile shall be reduced by the amount of the tax imposed by section 4064 with respect to such automobile. In the case of importation, if the date of entry or withdrawal from warehouse for consumption is later than the date of the first sale for ultimate use, such later date shall be substituted for the date of such first sale in the preceding sentence.

(e) Cross references

(1) For treatment of certain expenses incident to the purchase of a residence which were deducted as moving expenses by the taxpayer or his spouse under section 217(a), see section 217(e).

(2) For treatment of separate mineral interests as one property, see section 614.

(As amended Oct. 17, 1978, Pub. L. 95-472, § 4(b), 92 Stat. 1335; Nov. 6, 1978, Pub. L. 95-600, title V, § 515(2), title VI, § 601(b)(3), title VII, § 702(r)(3), 92 Stat. 2884, 2896, 2938; Nov. 9, 1978, Pub. L. 95-618, title I, § 101(b)(3), title II, § 201(b); 92 Stat. 3179, 3183.)

CODIFICATION

Amendment by section 702(r)(3) of Pub. L. 95-600, which directed that subsec. (a)(23) be redesignated (a)(21), was not executed to the Code in view of the prior addition of two subsecs. (a)(21) by Pub. L. 95-600, § 601(b)(3) and by Pub. L. 95-618, § 101(b)(3), and the prior redesignation of subsec. (a)(23) as (a)(22) by section 601(b)(3) of Pub. L. 95-600.

AMENDMENTS

1978—Subsec. (a)(21). Pub. L. 95-618, § 101(b)(3), added subsec. (a)(21), relating to an adjustment to the extent provided in section 44C.

Pub. L. 95-600, § 601(b)(3), added subsec. (a)(21), relating to an adjustment to the extent provided in section 1395.

Subsec. (a)(22). Pub. L. 95-600, §§ 515(2), 601(b)(3), redesignated former subsec. (a)(23) as (a)(22), and in subsec. (a)(22) as so redesignated, substituted "December 31, 1979" for "December 31, 1976".

Subsec. (a)(23). Pub. L. 95-600, § 601(b)(3), redesignated former subsec. (a)(23) as (a)(22).

Subsec. (c). Pub. L. 95-472 added subsec. (c). Former subsec. (c) redesignated subsec. (d).

Subsec. (d). Pub. L. 95-618, § 201(b), added subsec. (d). Former subsec. (d) redesignated (e).

Pub. L. 95-472 redesignated former subsec. (c) as subsec. (d).

Subsec. (e). Pub. L. 95-618, § 201(b), redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by Pub. L. 95-618 applicable to taxable years ending on or after April 20, 1977, see section 101(c) of Pub. L. 95-618, set out as an Effective Date note under section 44C of this title.

Amendment of subsec. (a) by section 601(b)(3) of Pub. L. 95-600 effective with respect to corporations chartered after Dec. 31, 1978 and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as an Effective Date note under section 1391 of this title.

Amendment of subsec. (a) by section 702(r)(3) of Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6698 of this title.

Redesignation of subsec. (d) as (e) and addition of subsec. (c) by Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Section 4(d) of Pub. L. 95-472 provided that: "The amendments made by this section [amending this section and section 2032A of this title] shall apply to involuntary conversions after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 75, 126, 174, 177, 179, 312, 372, 616, 617, 1011, 1015, 1034, 1053, 1250, 6362 of this title.

§ 1023. Carryover basis for certain property acquired from a decedent dying after December 31, 1979

(a) General rule

(1) Carryover basis

Except as otherwise provided in this section, the basis of carryover basis property acquired from a decedent dying after December 31, 1979, in the hands of the person so acquiring it shall be the adjusted basis of the property immediately before the death of the decedent, further adjusted as provided in this section.

[*See main edition for text of (2); (b)*]

(c) Increase in basis for Federal and State estate taxes attributable to appreciation

(1) Federal estate taxes

The basis of appreciated carryover basis property (determined after any adjustment under subsection (h) which is subject to the tax imposed by section 2001 or 2101 in the hands of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the Federal estate taxes as—

(A) the net appreciation in value of such property, bears to

(B) the fair market value of all property which is subject to the tax imposed by section 2001 or 2101.

(2) State estate taxes

The basis of appreciated carryover basis property (determined after any adjustment under subsection (h) which is subject to State estate taxes in the hands of the person acquiring it from the decedent shall be increased by an amount which bears the same ratio to the State estate taxes as—

(A) the net appreciation in value of such property, bears to

(B) the fair market value of all property which is subject to the State estate taxes.

[*See main edition for text of (d)*]

(e) Further increase in basis for certain State succession tax paid by transferee of property

If—

(1) any person acquires appreciated carryover basis property from a decedent, and

(2) such person actually pays an amount of estate, inheritance, legacy, or succession taxes with respect to such property to any State or the District of Columbia,

then the basis of such property (after any adjustment under subsection (h), (c), or (d)) shall be increased by an amount which bears the same ratio to the aggregate amount of all such taxes paid by such person as—

(A) the net appreciation in value of such property, bears to

(B) the fair market value of all property acquired by such person which is subject to such taxes.

(f) Special rules and definitions for application of subsection (c), (d), and (e)

[See main edition for text of (1)]

(2) Net appreciation

For purposes of this section, the net appreciation in value of any property is the amount by which the fair market value of such property exceeds the adjusted basis of such property immediately before the death of the decedent (as determined after any adjustment under subsection (h)). For purposes of paragraph (2) of subsection (c), such adjusted basis shall be increased by the amount of any adjustment under paragraph (1) of subsection (c), for purposes of subsection (d), such adjusted basis shall be increased by the amount of any adjustment under subsection (c), and, for purposes of subsection (e), such adjusted basis shall be increased by the amount of any adjustment under subsection (c) or (d).

(3) Federal and State estate taxes

For purposes of subsection (c)—

(A) Federal estate taxes

The term "Federal estate taxes" means the tax imposed by section 2001 or 2101, reduced by the credits against such tax.

(B) State estate taxes

The term "State estate taxes" means any estate, inheritance, legacy, or succession taxes, for which the estate is liable, actually paid by the estate to any State or the District of Columbia.

[See main edition for text of (4) and (5)]

(g) Other special rules and definitions

(1) Fair market value

For purposes of this section, when not otherwise distinctly expressed, the term "fair market value" means value as determined under chapter 11 (without regard to whether there is a mortgage on, or indebtedness in respect of, the property).

[See main edition for text of (2)]

(3) Decedent's basis unknown

If the facts necessary to determine the basis (unadjusted) of carryover basis property immediately before the death of the decedent are unknown and cannot be reasonably ascertained, such basis shall be treated as being the fair market value of such property as of the date (or approximate date) at which such property was acquired by the decedent or by the last preceding owner in whose hands it did not have a basis determined in whole or in part by reference to its basis in the hands of a prior holder.

(h) Adjustment to basis for December 31, 1976, fair market value

(1) Marketable bonds and securities

If the adjusted basis immediately before the death of the decedent of any property which is carryover basis property reflects the adjusted basis of any marketable bond or security on December 31, 1976, and if the fair market value of such bond or security on December 31, 1976, exceeded its adjusted basis on such date, then, for purposes of determining gain and applying this section, the adjusted basis of such property shall be increased by the amount of such excess.

(2) Property other than marketable bonds and securities

(A) In general

If—

[See main edition for text of (i) and (ii)]

then, for purposes of determining gain and applying this section, the adjusted basis of such property immediately before the death of the decedent (determined without regard to this subsection) shall be increased by the amount determined under subparagraph (B).

[See main edition for text of (B) to (E)]

(3) Minimum basis for tangible personal property

(A) In general

If the holding period for any carryover basis property which is tangible personal property includes December 31, 1976, then, for purposes of determining gain and applying this section, the adjusted basis of such property immediately before the death of the decedent shall be treated as being not less than the amount determined under subparagraph (B).

(B) Amount

The amount determined under this subparagraph for any property is—

(i) the value of such property (as determined with respect to the estate of the decedent without regard to section 2032), divided by

(ii) 1.0066 to the nth power where n equals the number of full calendar months which have elapsed between December 31, 1976, and the date of the decedent's death.

(4) Only one fresh start

There shall be no increase in basis under this subsection by reason of the death of any decedent if the adjusted basis of the property in the hands of such decedent reflects the adjusted basis of property which was carryover basis property with respect to a prior decedent.

[*See main edition for text of* (i)]

(As amended Pub. L. 95-600, title V, § 515(3), (4), title VII, § 702(c)(2)-(4), (6)-(8), Nov. 6, 1978, 92 Stat. 2884, 2926-2928.)

AMENDMENTS

1978—Pub. L. 95-600, § 515(3), substituted "December 31, 1979" for "December 31, 1976" in section catchline.

Subsec. (a). Pub. L. 95-600, § 515(4), substituted "December 31, 1979" for "December 31, 1976".

Subsec. (c). Pub. L. 95-600, § 702(c)(6)(A), designated existing provisions as par. (1) and, in par. (1) as so designated, substituted "Federal estate taxes" for "Federal and State estate taxes" and added par. (2).

Subsec. (e)(2). Pub. L. 95-600, § 702(c)(7), struck out "for which the estate is not liable" following "any State or the District of Columbia".

Subsec. (f)(2). Pub. L. 95-600, § 702(c)(6)(B), substituted "For purposes of paragraph (2) of subsection (c), such adjusted basis shall be increased by the amount of any adjustment under paragraph (1) of subsection (c), for purposes of subsection (d)" for "For purposes of subsection (d)".

Subsec. (f)(3). Pub. L. 95-600, § 702(c)(6)(C), in introductory material struck out "Federal and State estate taxes means", and designated subpar. (A) as definition of Federal estate taxes and subpar. (b) as definition of State estate taxes.

Subsec. (g)(1). Pub. L. 95-600, § 702(c)(3)(A), substituted "chapter 11 (without regard to whether there is a mortgage on, or indebtedness in respect of, the property)" for "chapter 11".

Subsec. (g)(3). Pub. L. 95-600, § 702(c)(2)(B), substituted "and cannot be reasonably ascertained" for "to the person acquiring such property from the decedent".

Subsec. (g)(4). Pub. L. 95-600, § 702(c)(3)(B), struck out par. (4) provisions prescribing as the fair market value of property, for purposes of subsecs. (c) to (e), when there was an unpaid mortgage on, or indebtedness in respect of, such property, the mortgage or indebtedness did not constitute a liability of the estate, and such property was included in the gross estate, the fair market value of such property, diminished by the mortgage or indebtedness.

Subsec. (h)(1). Pub. L. 95-600, § 702(c)(8), inserted "and applying this section" following "for purposes of determining gain".

Subsec. (h)(2)(A). Pub. L. 95-600, § 702(c)(8), inserted "and applying this section" following "for purposes of determining gain".

Subsec. (h)(3). Pub. L. 95-600, § 702(c)(2)(A), added subsec. (h)(3).

Subsec. (h)(4). Pub. L. 95-600, § 702(c)(4), added subsec. (h)(4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (c), (e)(2), (f)(2), (3), (g)(1), (3), (4), (h)(1), (2)(A), (3), (4) by section 702(c) of Pub. L. 95-600 to take effect as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94-455, see section 702(c)(10) of Pub. L. 95-600, set out as and Effective Date of 1978 Amendment note under section 1014 of this title.

EFFECTIVE DATE

Section 2005(f) of Pub. L. 94-455, as amended by Pub. L. 95-600, title V, § 515(6), Nov. 6, 1978, 92 Stat. 2884, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [enacting sections 1010(a)(23), 1023, 1040, 6639A and 6694 of this title, amending sections 691(c)(2)(A), (C) and 1014(d) of this title repealing section 1246(e) of this title, and renumbering section 1023 as 1024] shall apply in respect of decedents dying after December 31, 1979.

"(2) The amendment made by subsection (c) [enacting section 1015(d)(6) of this title] shall apply to gifts made after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 306, 382, 691, 1001, 1014, 1016, 1223, 2614, 6039A of this title.

§ 1024. Cross references

REFERENCES IN TEXT

The Bankruptcy Act, referred to in par. (2), was repealed effective Oct. 1, 1979, by Pub. L. 95-598, title IV, §§ 401(a), 402(a), Nov. 6, 1978, 92 Stat. 2682. See Title 11, Bankruptcy.

PART III—COMMON NONTAXABLE EXCHANGES

Sec.
1034. Rollover of gain on sale of principal residence.

AMENDMENTS

1978—Pub. L. 95-600, title IV, § 405(c)(2), Nov. 6, 1978, 92 Stat. 2871, in item 1034 substituted "Rollover of gain on sale of principal residence" for "Sale or exchange of residence".

§ 1033. Involuntary conversions

(a) General rule

If property (as a result of its destruction in whole or in part, theft, seizure, or requisition or condemnation or threat or imminence thereof) is compulsorily or involuntarily converted—

[*See main edition for text of* (1)]

(2) Conversion into money

Into money or into property not similar or related in service or use to the converted property, the gain (if any) shall be recognized except to the extent hereinafter provided in this paragraph:

(A) Nonrecognition of gain

If the taxpayer during the period specified in subparagraph (B), for the purpose of replacing the property so converted, purchases other property similar or related in service or use to the property so converted, or purchases stock in the acquisition of control of a corporation owning such other property, at the election of the taxpayer the gain shall be recognized only to the extent that the amount realized upon such conversion (regardless of whether such amount is received in one or more taxable years) exceeds the cost of such other property or such stock. Such election shall be made at such time and in such manner as the Secretary may by regulations prescribe. For purposes of this paragraph—

[*See main edition for text of* (i)]

(ii) the taxpayer shall be considered to have purchased property or stock only if, but for the provisions of subsection (b) of this section, the unadjusted basis of such property or stock would be its cost within the meaning of section 1012.

[*See main edition for text of* (B) *to* (E); (b) *to* (e)]

(f) Replacement of livestock with other farm property where there has been environmental contamination

For purposes of subsection (a), if, because of soil contamination or other environmental con-

tamination, it is not feasible for the taxpayer to reinvest the proceeds from compulsorily or involuntarily converted livestock in property similar or related in use to the livestock so converted, other property (including real property) used for farming purposes shall be treated as property similar or related in service or use to the livestock so converted.

(g) Condemnation of real property held for productive use in trade or business or for investment

(1) Special rule

For purposes of subsection (a), if real property (not including stock in trade or other property held primarily for sale) held for productive use in trade or business or for investment is (as the result of its seizure, requisition, or condemnation, or threat or imminence thereof) compulsorily or involuntarily converted, property of a like kind to be held either for productive use in trade or business or for investment shall be treated as property similar or related in service or use to the property so converted.

(2) Limitations

Paragraph (1) shall not apply to the purchase of stock in the acquisition of control of a corporation described in subsection (a)(2)(A).

(3) Election to treat outdoor advertising displays as real property

(A) In general

A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which the credit allowed by section 38 (relating to investment in certain depreciable property) is or has been claimed or with respect to which an election under section 179(a) (relating to additional first-year depreciation allowance for small business) is in effect.

(B) Election

An election made under subparagraph (A) may not be revoked without the consent of the Secretary.

(C) Outdoor advertising display

For purposes of this paragraph, the term "outdoor advertising display" means a rigidly assembled sign, display, or device permanently affixed to the ground or permanently attached to a building or other inherently permanent structure constituting, or used for the display of, a commercial or other advertisement to the public.

(D) Character of replacement property

For purposes of this subsection, an interest in real property purchased as replacement property for a compulsorily or involuntarily converted outdoor advertising display defined in subparagraph (C) (and treated by the taxpayer as real property) shall be considered property of a like kind as the property converted without regard to whether the taxpayer's interest in the replacement property is the same kind of interest the taxpayer held in the converted property.

(4) Special rule

In the case of a compulsory or involuntary conversion described in paragraph (1), subsection (a)(2)(B)(i) shall be applied by substituting "3 years" for "2 years".

(h) Cross references

(1) For determination of the period for which the taxpayer has held property involuntarily converted, see section 1223.

(2) For treatment of gains from involuntary conversions as capital gains in certain cases, see section 1231(a).

(3) For one-time exclusion from gross income of gain from involuntary conversion of principal residence by individual who has attained age 55, see section 121.

(As amended Nov. 6, 1978, Pub. L. 95-600, title IV, § 404(c)(4), title V, § 542(a), title VII, § 703(j)(5), 92 Stat. 2870, 2888, 2941.)

AMENDMENTS

1978—Subsec. (a)(2)(A)(ii). Pub. L. 95-600, § 703(j)(5), substituted "subsection (b)" for "subsection (c)".

Subsec. (f). Pub. L. 95-600, § 542(a), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95-600, § 542(a), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95-600, §§ 404(c)(4), 542(a), redesignated former subsec. (g) as (h) and, as so redesignated, substituted in par. (3) "one-time exclusion" for "exclusion" and "age 55" for "age 65".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2)(A)(ii) by section 703(j)(5) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 542(b) of Pub. L. 95-600 provided that: "The amendments made by subsection (a) [redesignating former subsecs. (f) and (g) as (g) and (h), respectively, and adding subsec. (f)] shall apply with respect to taxable years beginning after December 31, 1974."

Amendment of subsec. (h)(3) by section 404(c)(4) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 121 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 48, 121, 337, 381, 1016, 1071, 1223, 1245, 1250, 1251, 1351, 2032A, 6212, 6504 of this title.

§ 1034. Rollover of gain on sale of principal residence

[See main edition for text of (a)]

(b) Adjusted sales price defined

(1) In general

For purposes of this section, the term "adjusted sales price" means the amount realized, reduced by the aggregate of the expenses for work performed on the old residence in order to assist in its sale.

(2) Limitations

The reduction provided in paragraph (1) applies only to expenses—

(A) for work performed during the 90-day period ending on the day on which the con-

tract to sell the old residence is entered into;

(B) which are paid on or before the 30th day after the date of the sale of the old residence; and

(C) which are—

(i) not allowable as deductions in computing taxable income under section 63 (defining taxable income), and

(ii) not taken into account in computing the amount realized from the sale of the old residence.

(c) Rules for application of section

For purposes of this section:

[*See main edition for text of (1) to (3)*]

(4) If the taxpayer, during the period described in subsection (a), purchases more than one residence which is used by him as his principal residence at some time within 18 months after the date of the sale of the old residence, only the last of such residences so used by him after the date of such sale shall constitute the new residence. If a principal residence is sold in a sale to which subsection (d)(2) applies within 18 months after the sale of the old residence, for purposes of applying the preceding sentence with respect to the old residence, the principal residence so sold shall be treated as the last residence used during such 18-month period.

[*See main edition for text of (5)*]

(d) Limitation

(1) In general

Subsection (a) shall not apply with respect to the sale of the taxpayer's residence if within 18 months before the date of such sale the taxpayer sold at a gain other property used by him as his principal residence, and any part of such gain was not recognized by reason of subsection (a).

(2) Subsequent sale connected with commencing work at new place

Paragraph (1) shall not apply with respect to the sale of the taxpayer's residence if—

(A) such sale was in connection with the commencement of work by the taxpayer as an employee or as a self-employed individual at a new principal place of work, and

(B) if the residence so sold is treated as the former residence for purposes of section 217 (relating to moving expenses), the taxpayer would satisfy the conditions of subsection (c) of section 217 (as modified by the other subsections of such section).

[*See main edition for text of (e) to (j)*]

(k) Individual whose tax home is outside the United States

The running of any period of time specified in subsection (a) or (c) (other than the 18 months referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) has a tax home (as defined in section 913(j)(1)(B)) outside the United States after the date of the sale of the old residence; except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence.

(*l*) Cross reference

For one-time exclusion from gross income of gain from sale of principal residence by individual who has attained age 55, see section 121.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(13), 91 Stat. 138; Nov. 6, 1978, Pub. L. 95-600, title IV, §§ 404(c)(5), 405(a)-(c)(1), 92 Stat. 2870, 2871; Nov. 8, 1978, Pub. L. 95-615, title II, § 206, 92 Stat. 3107.)

AMENDMENTS

1978—Pub. L. 95-600, § 405(c)(1), in the section catchline substituted "Rollover of gain on sale of principal" for "Sale or exchange of".

Subsec. (c)(4). Pub. L. 95-600, § 405(b), added provisions relating to the treatment of the principal residence as the last residence.

Subsec. (d). Pub. L. 95-600, § 405(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (k). Pub. L. 95-615, § 206, added subsec. (k). Former subsec. (k) redesignated (*l*).

Pub. L. 95-600, § 404(c)(5), added provisions relating to a one-time exclusion and principal residence, and substituted "55" for "65".

Subsec. (*l*). Pub. L. 95-615, § 206, redesignated former subsec. (k) as (*l*).

1977—Subsec. (b)(2)(C)(i). Pub. L. 95-30 substituted "section 63" for "section 63(a)".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 405(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending sections 1034 (e)(4), (d), 1038(e)(1)(B), 1250(d)(7)(A), 6212(c)(2)(C), and 6504(4) of this title] shall apply to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date."

Amendment of subsec. (k) by section 404(c)(5) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44, 44C, 57, 121, 280A, 512, 1016, 1038, 1223, 1250, 6212, 6504 of this title.

§ 1038. Certain reacquisitions of real property

[*See main edition for text of (a) to (d)*]

(e) Principal residences

If—

(1) subsection (a) applies to a reacquisition of real property with respect to the sale of which—

(A) an election under section 121 (relating to one-time exclusion of gain from sale of

principal residence by individual who has attained age 55) is in effect, or

(B) gain was not recognized under section 1034 (relating to rollover of gain on sale of principal residence); and

(2) within one year after the date of the reacquisition of such property by the seller, such property is resold by him,

then, under regulations prescribed by the Secretary, subsections (b), (c), and (d) of this section shall not apply to the reacquisition of such property and, for purposes of applying sections 121 and 1034, the resale of such property shall be treated as a part of the transaction constituting the original sale of such property.

[See main edition for text of (f)]

(As amended Pub. L. 95-600, title IV, §§ 404(c)(6), 405(c)(3), Nov. 6, 1978, 92 Stat. 2870, 2871.)

CODIFICATION

Section 405(c)(3) of Pub. L. 95-600 purported to amend section 1083(e)(1)(B) of this title, however, since section 1083 of this title contains no subsec. (e)(1)(B), this amendment was executed to subsec. (e)(1)(B) of this section as the probable intent of Congress.

AMENDMENTS

1978—Subsec. (e)(1)(A). Pub. L. 95-600, § 404(c)(6), substituted "relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55" for "relating to gain from sale or exchange of residence of an individual who has attained age 65".

Subsec. (e)(1)(B). Pub. L. 95-600, § 405(c)(3), substituted "(relating to rollover of gain on sale of principal residence)" for "(relating to sale or exchange of residence)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (e)(1)(A) by section 404(c)(6) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 121 of this title.

Amendment of subsec. (e)(1)(B) by section 405(c)(3) of Pub. L. 95-600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1034 of this title.

§ 1040. Use of certain appreciated carryover basis property to satisfy pecuniary request[1]

(a) General rule

If the executor of the estate of any decedent satisfies the right of any person to receive a pecuniary bequest with appreciated carryover basis property (as defined in section 1023(f)(5)), then gain on such exchange shall be recognized to the estate only to the extent that, on the date of such exchange, the fair market value of such property exceeds the value of such property for purposes of chapter 11 (determined without regard to section 2032A).

[1] So in original. Probably should be "bequest".

[See main edition for text of (b) and (c)]

(As amended Pub. L. 95-600, title VII, § 702(d)(3), Nov. 6, 1978, 92 Stat. 2929.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 substituted "chapter 11 (determined without regard to section 2032A)" for "chapter 11".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(d)(6) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 2032A of this title.

PART IV—SPECIAL RULES

Sec.
1058. Transfers of securities under certain agreements.
1059. Cross references.

AMENDMENTS

1978—Pub. L. 95-345, § 2(d)(2), Aug. 15, 1978, 92 Stat. 483, added item 1058 and renumbered former item 1058 as 1059.

§ 1058. Transfers of securities under certain agreements

(a) General rule

In the case of a taxpayer who transfers securities (as defined in section 1236(c)) pursuant to an agreement which meets the requirements of subsection (b), no gain or loss shall be recognized on the exchange of such securities by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for securities identical to the securities transferred by that taxpayer.

(b) Agreement requirements

In order to meet the requirements of this subsection, an agreement shall—

(1) provide for the return to the transferor of securities identical to the securities transferred;

(2) require that payments shall be made to the transferor of amounts equivalent to all interest, dividends, and other distributions which the owner of the securities is entitled to receive during the period beginning with the transfer of the securities by the transferor and ending with the transfer of identical securities back to the transferor;

(3) not reduce the risk of loss or opportunity for gain of the transferor of the securities in the securities transferred; and

(4) meet such other requirements as the Secretary may by regulation prescribe.

(c) Basis

Property acquired by a taxpayer described in subsection (a), in a transaction described in that subsection, shall have the same basis as the property transferred by that taxpayer.

(Added Pub. L. 95-345, § 2(d)(1), Aug. 15, 1978, 92 Stat. 482.)

PRIOR PROVISIONS

A prior section 1058, act Aug. 16, 1954, ch. 736, § 1058, 68A Stat. 311, which related to cross references, was renumbered section 1059 of this title.

EFFECTIVE DATE

Section applicable with respect to amounts received after Dec. 31, 1976, as payments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in this section, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 512 of this title.

§ 1059. Cross references

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. 1160).

(2) For recognition of gain or loss in connection with the construction of new vessels, see section 511 of such Act, as amended (46 U.S.C. 1161).

(3) For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741).

(Aug. 16, 1954, ch. 736, 68A Stat. 311, § 1054, renumbered § 1055, Sept. 14, 1960, Pub. L. 86-779, § 8(b), 74 Stat. 1003; renumbered § 1056, Apr. 10, 1963, Pub. L. 88-9, § 1(b), 77 Stat. 7; renumbered § 1057, Oct. 4, 1976, Pub. L. 94-455, title II, § 212(a)(1), 90 Stat. 1545; renumbered § 1058, Oct. 4, 1976, Pub. L. 94-455, title X, § 1015(c), 90 Stat. 1618; renumbered § 1059, Aug. 15, 1978, Pub. L. 95-345, § 2(d)(1), 92 Stat. 482.)

PART VIII—DISTRIBUTIONS PURSUANT TO BANK HOLDING COMPANY ACT

Sec.
1101. Distributions pursuant to Bank Holding Company Act.

AMENDMENTS

1976—Pub. L. 94-452, § 2(a), Oct. 2, 1976, 90 Stat. 1503, struck out in part heading "OF 1956" following "BANK HOLDING COMPANY ACT" and in item 1101 "of 1956" following "Bank Holding Company Act".

§ 1101. Distributions pursuant to Bank Holding Company Act

(a) Distributions of certain non-banking property

(1) Distributions of prohibited property

If—

(A) a qualified bank holding corporation distributes prohibited property (other than stock received in an exchange to which subsection (c)(2) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

(ii) to a shareholder, in exchange for its preferred stock, or

(iii) to a security holder, in exchange for its securities, and

(B) the Board has, before the distribution, certified that the distribution of such prohibited property is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) Distributions of stock and securities received in an exchange to which subsection (c)(2) applies

If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c)(2) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

(ii) common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its common stock, or

(iii) preferred stock or common stock received in an exchange to which subsection (c)(2) applies to a shareholder, in exchange for its preferred stock, or

(iv) securities or preferred or common stock received in an exchange to which subsection (c)(2) applies to a security holder, in exchange for its securities, and

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) Pro rata and other requirements

(A) In general

Paragraphs (1) and (2) of this subsection, or paragraphs (1) and (2) of subsection (b), as the case may be, shall apply to any distribution to the shareholders of a qualified bank holding corporation only if each distribution—

(i) which is made by such corporation to its shareholders after July 7, 1970, and on or before the date on which the Board makes its final certification under subsection (e), and

(ii) to which such paragraph (1) or (2) applies (determined without regard to this paragraph),

meets the requirements of subparagraph (B), (C), or (D).

(B) Pro rata requirements

A distribution meets the requirements of this subparagraph if the distribution is pro rata with respect to all shareholders of the distributing qualified bank holding corporation or with respect to all shareholders of common stock of such corporation.

(C) Redemptions when uniform offer is made

A distribution meets the requirements of this subparagraph if the distribution is in exchange for stock of the distributing qualified bank holding corporation and such distribution is pursuant to a good faith offer made on a uniform basis to all shareholders

of the distributing qualified bank holding corporation or to all shareholders of common stock of such corporation.

(D) Non-pro rata distributions from certain closely-held corporations

A distribution meets the requirements of this subparagraph if such distribution is made by a qualified bank holding corporation which does not have more than 10 shareholders (within the meaning of section 1371(a)(1)) and does not have as a shareholder a person (other than an estate) which is not an individual, and if the Board (after consultation with the Secretary) certifies that—

(i) a distribution which meets the requirements of subparagraph (B) or (C) is not appropriate to effectuate section 4 or the policies of the Bank Holding Company Act, and

(ii) the distribution being made is necessary or appropriate to effectuate section 4 of the policies of such Act.

(4) Exception

This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (b) or has made an election under section 6158 with respect to bank property (as defined in section 6158(f)(3)).

(5) Distributions involving gift or compensation

In the case of a distribution to which paragraph (1) or (2) applies but which—

(A) results in a gift, see section 2501 and following, or

(B) has the effect of the payment of compensation, see section 61.

(b) Corporation ceasing to be a bank holding company

(1) Distributions of property which cause a corporation to be a bank holding company

If—

(A) a qualified bank holding corporation distributes property (other than stock received in an exchange to which subsection (c)(3) applies)—

(i) to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

(ii) to a shareholder, in exchange for its preferred stock, or

(iii) to a security holder, in exchange for its securities, and

(B) the Board has, before the distribution, certified that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under this subsection or exchanged under subsection (c)(3), and

(ii) the distribution is necessary or appropriate to effectuate the policies of such Act,

then no gain to the shareholder or security holder from the receipt of such property shall be recognized.

(2) Distributions of stock and securities received in an exchange to which subsection (c)(3) applies

If—

(A) a qualified bank holding corporation distributes—

(i) common stock received in an exchange to which subsection (c)(3) applies to a shareholder (with respect to its stock held by such shareholder), without the surrender by such shareholder of stock in such corporation, or

(ii) common stock received in an exchange to which subsection (c)(3) applies to a shareholder in exchange for its common stock, or

(iii) preferred stock or common stock received in an exchange to which subsection (c)(3) applies to a shareholder, in exchange for its preferred stock, or

(iv) securities or preferred or common stock received in an exchange to which subsection (c)(3) applies to a security holder, in exchange for its securities, and

(B) any preferred stock received has substantially the same terms as the preferred stock exchanged, and any securities received have substantially the same terms as the securities exchanged,

then, except as provided in subsection (f), no gain to the shareholder or security holder from the receipt of such stock or such securities or such stock and securities shall be recognized.

(3) Pro rata and other requirements

For pro rata and other requirements, see subsection (a)(3).

(4) Exception

This subsection shall not apply to any distribution by a corporation if such corporation, a corporation having control of such corporation, or a subsidiary of such corporation has made any distribution pursuant to subsection (a) or has made an election under section 6158 with respect to prohibited property.

(5) Distributions involving gift or compensation

In the case of a distribution to which paragraph (1) or (2) applies but which—

(A) results in a gift, see section 2501 and following, or

(B) has the effect of the payment of compensation, see section 61.

(c) Property acquired after July 7, 1970

(1) In general

Except as provided in paragraphs (2) and (3), subsection (a) or (b) shall not apply to—

(A) any property acquired by the distributing corporation after July 7, 1970, unless (i) gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b), or (ii) such property was received by it in ex-

change for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) such property was acquired by the distributing corporation in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1)(A), (B), (E), or (F), or

(B) any property which was acquired by the distributing corporation in a distribution with respect to stock acquired by such corporation after July 7, 1970, unless such stock was acquired by such corporation (i) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b), or (ii) in exchange for all of its stock in an exchange to which paragraph (2) or (3) applies, or (iii) in a transaction in which gain was not recognized under section 305(a) or section 332, or under section 354 or 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss) with respect to a reorganization described in section 368(a)(1)(A), (B), (E), or (F), or

(C) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 332, unless such property was acquired from a corporation which, if it had been a qualified bank holding corporation, could have distributed such property under subsection (a)(1) or (b)(1), or

(D) any property acquired by the distributing corporation in a transaction in which gain was not recognized under section 354 or 356 with respect to a reorganization described in section 368(a)(1)(A) or (B), unless such property was acquired by the distributing corporation in exchange for property which the distributing corporation could have distributed under subsection (a)(1) or (b)(1).

(2) Exchanges involving prohibited property

If—

(A) any qualified bank holding corporation exchanges (i) property, which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except property described in subsection (b)(1)(B)(i)), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property,

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (a)(2)(A), and

(C) before such distribution, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (a)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that the exchange and distribution are necessary or appropriate to effectuate section 4 of the Bank Holding Company Act,

then paragraph (1) shall not apply with respect to such distribution.

(3) Exchanges involving interests in banks

If—

(A) any qualified bank holding corporation exchanges (i) property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain to such shareholders or security holders, and other property (except prohibited property), for (ii) all of the stock of a second corporation created and availed of solely for the purpose of receiving such property.[1]

(B) immediately after the exchange, the qualified bank holding corporation distributes all of such stock in a manner prescribed in subsection (b)(2)(A), and

(C) before such distribution, the Board has certified (with respect to the property exchanged which consists of property which, under subsection (b)(1), such corporation could distribute directly to its shareholders or security holders without the recognition of gain) that—

(i) such property is all or part of the property by reason of which such corporation controls (within the meaning of section 2(a) of the Bank Holding Company Act) a bank or bank holding company, or such property is part of the property by reason of which such corporation did control a bank or a bank holding company before any property of the same kind was distributed under subsection (b)(1) or exchanged under this paragraph, and

(ii) the exchange and distribution are necessary or appropriate to effectuate the policies of such Act,

then paragraph (1) shall not apply with respect to such distribution.

(d) Distributions to avoid Federal income tax

(1) Prohibited property

Subsection (a) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970, to any corporation, property (other than prohibited property) as part of a plan one of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(2) Banking property

Subsection (b) shall not apply to a distribution if, in connection with such distribution, the distributing corporation retains, or transfers after July 7, 1970 to any corporation, property (other than property described in subsection (b)(1)(B)(i)) as part of a plan one

[1] So in original. Period probably should be a comma.

of the principal purposes of which is the distribution of the earnings and profits of any corporation.

(e) Final certification

(1) For subsection (a)

Subsection (a) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) disposed of all of the property the disposition of which is necessary or appropriate to effectuate section 4 of the Bank Holding Company Act.

(2) For subsection (b)

Subsection (b) shall not apply with respect to any distribution by a corporation unless the Board certifies, before the close of the calendar year following the calendar year in which the last distribution occurred, that the corporation has (before the expiration of the period prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company) ceased to be a bank holding company.

(f) Certain exchanges of securities

In the case of an exchange described in subsection (a)(2)(A)(iv) or subsection (b)(2)(A)(iv), subsection (a) or subsection (b) (as the case may be) shall apply only to the extent that the principal amount of the securities received does not exceed the principal amount of the securities exchanged.

(Added May 9, 1956, ch. 240, § 10(a), 70 Stat. 139, and amended Oct. 2, 1976, Pub. L. 94-452, § 2(a), 90 Stat. 1503; Oct. 4, 1976, Pub. L. 94-455, title XIX, 1906(b)(13)(A), 90 Stat. 1834.)

REFERENCES IN TEXT

Such Act and the Bank Holding Company Act, referred to in catchline subsecs. (b)(1)(B)(ii), (c)(3)(C)(ii), and (e), are defined in section 1103 of this title to mean the Bank Holding Company Act of 1956, as amended through Dec. 31, 1970, act May 9, 1956, ch. 240, 70 Stat. 133, as amended which is classified principally to chapter 17 (§ 1841 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables.

Section 4 of the Bank Holding Company Act, referred to in subsecs. (a)(1)(B), (a)(3)(D)(i), (ii), (c)(2)(C), and (e)(1), is section 4 of the Bank Holding Company Act of 1956, as amended through Dec. 31, 1970, which is classified to section 1843 of Title 12, Banks and Banking.

Section 2(a) of the Bank Holding Company Act, referred to in subsecs. (b)(1)(B)(i) and (c)(3)(C)(i), is section 2(a) of the Bank Holding Company Act of 1956, as amended through Dec. 31, 1970, which is classified to section 1841(a) of Title 12, Banks and Banking.

AMENDMENTS

1976—Pub. L. 94-452 struck out in section catchline "of 1956" following "Bank Holding Company Act".

Subsec. (a)(1)(B). Pub. L. 94-452 struck out "of 1956" following "Bank Holding Company Act".

Subsec. (a)(3). Pub. L. 94-452 added subsec. (a)(3) and struck out former subsec. (a)(3) which provided that paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

Subsec. (a)(3)(D). Pub. L. 94-455 struck out "or his delegate" following "Secretary".

Subsec. (a)(4). Pub. L. 94-452 substituted reference to corporation, corporation having control of such corporation, or a subsidiary of such corporation for reference to corporation and added provision excepting distributing corporation which makes an election under section 6158 with respect to bank property.

Subsec. (a)(5)(B). Pub. L. 94-452 substituted "section 61" for "section 61(a)(1)".

Subsec. (b)(1)(B)(i). Pub. L. 94-452 struck out "of 1956" following "Bank Holding Company Act".

Subsec. (b)(3). Pub. L. 94-452 added subsec. (b)(3) and struck out former subsec. (b)(3) which provided that paragraphs (1) and (2) shall apply to a distribution whether or not the distribution is pro rata with respect to all of the shareholders of the distributing qualified bank holding corporation.

Subsec. (b)(4). Pub. L. 94-452 substituted reference to corporation, corporation having control of such corporation, or a subsidiary of such corporation for reference to corporation and added provision excepting distributing corporation which makes an election under section 6158 with respect to bank property.

Subsec. (b)(5)(B). Pub. L. 94-452 substituted "section 61" for "section 61(a)(1)".

Subsec. (c). Pub. L. 94-452 substituted in subsection catchline and in pars. (1)(A) and (1)(B) "July 7, 1970" for "May 15, 1955", in pars. (1)(A) and (1)(B) "section 368(a)(1)(A), (B), (E), or (F)" for "section 368(a)(1)(E) or (F)", and in pars. (2)(C) and (3)(C) "distribution" for "exchange", added in pars. (1)(A) and (1)(B) reference to section 356 (but only with respect to property permitted by section 354 or 356 to be received without the recognition of gain or loss), struck out in pars. (2)(C) and (3)(C)(i) "of 1956" following "Bank Holding Company Act", and added par. (1)(D).

Subsecs. (d)(1), (2). Pub. L. 94-452 substituted in su lecs. (d)(1) and (2) "July 7, 1970" for "May 15, 1955".

Subsec. (d)(3). Pub. L. 94-452 struck out subsec. (d)(3) which related to the applicability of subsecs. (a) and (b) to portion of transfer which was a contribution to the capital of a corporation made after May 15, 1955 and prior to May 9, 1956.

Subsec. (e)(1). Pub. L. 94-452 inserted "before the close of the calendar year following the calendar year in which the distribution occurred" following "the Board certifies", substituted "prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company" for "permitted under section 4(a) of the Bank Holding Company Act of 1956 including any extensions thereof granted to such corporation under such section 4(a)", and struck out "(or would have been so necessary or appropriate if the corporation had continued to be a bank holding company)".

Subsec. (e)(2). Pub. L. 94-452 incorporated in subsec. (e)(2) provisions of former subpar. (A) adding "before the close of the calendar year following the calendar year in which the last distribution occurred" following "the Board certifies," and substituting "prohibited property is permitted under the Bank Holding Company Act to be held by a bank holding company" for "specified in subparagraph (B)," and struck out provisions of former subpar. (B) relating to the period of time referred to in former subpar. (A) which expires 2 years after May 9, 1956, or 2 years after date on which corporation becomes a holding company whichever is later and the authority of the Board to extend such period.

Subsec. (f). Pub. L. 94-452 reenacted subsec. without change.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(d)(1) of Pub. L. 94-452 provided that the amendment by section 2(a) of Pub. L. 94-452 would be effective on Oct. 1, 1977, with respect to distributions

after July 7, 1970, in taxable years ending after July 7, 1970.

§ 1102. Special rules

(a) Basis of property acquired in distributions

If, by reason of section 1101, gain is not recognized with respect to the receipt of any property, then, under regulations prescribed by the Secretary—

(1) if the property is received by a shareholder with respect to stock without the surrender by such shareholder of stock, the basis of the property received and of the stock with respect to which it is distributed shall, in the distributee's hands, be determined by allocating between such property and such stock the adjusted basis of such stock, or

(2) if the property is received by a shareholder in exchange for stock or by a security holder in exchange for securities, the basis of the property received shall, in the distributee's hands, be the same as the adjusted basis of the stock or securities exchanged, increased by the amount of gain to the taxpayer recognized on the property received.

(b) Periods of limitation

The periods of limitation provided in section 6501 (relating to limitations on assessment and collection) shall not expire, with respect to any deficiency (including interest and additions to the tax) resulting solely from the receipt of property by shareholders in a distribution which is certified by the Board under subsection (a), (b), or (c) of section 1101, until 5 years after the distributing corporation notifies the Secretary (in such manner and with such accompanying information as the Secretary may by regulations prescribe)—

(1) that the final certification required by subsection (e) of section 1101 has been made, or

(2) that such final certification will not be made;

and such assessment may be made notwithstanding any provision of law or rule of law which would otherwise prevent such assessment.

(c) Allocation of earnings and profits

(1) Distribution of stock in a controlled corporation

In the case of a distribution by a qualified bank holding corporation under section 1101(a)(1) or (b)(1) of stock in a controlled corporation, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation shall be made under regulations prescribed by the Secretary.

(2) Exchanges described in section 1101(c)(2) or (3)

In the case of any exchange described in section 1101(c)(2) or (3), proper allocation with respect to the earnings and profits of the corporation transferring the property and the corporation receiving such property shall be made under regulations prescribed by the Secretary.

(3) Definition of controlled corporation

For purposes of paragraph (1), the term "controlled corporation" means a corporation with respect to which at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock is owned by the distributing qualified bank holding corporation.

(d) Itemization of property

In any certification under this part, the Board shall make such specification and itemization of property as may be necessary to carry out the provisions of this part.

(Added May 9, 1956, ch. 240, § 10(a), 70 Stat. 143, and amended Dec. 27, 1967, Pub. L. 90-225, § 1, 81 Stat. 730; Oct. 2, 1976, Pub. L. 94-452, § 2(a), 90 Stat. 1508; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834.)

Amendments

1976—Subsec. (a). Pub. L. 94-455 struck out "or his delegate" following "Secretary".

Pub. L. 94-452, in par. (2), restructured existing provisions dropping subparagraph designations and eliminating provisions of former subpar. (A) relating to the amount of the property received which was treated as a dividend.

Subsec. (b). Pub. L. 94-455 struck out "or his delegate" following "Secretary" wherever appearing.

Pub. L. 94-452 eliminated reference to the period (including extensions thereof) prescribed in section 4(a) of the Bank Holding Company Act of 1956, or section 1101(e)(2)(B), whichever is applicable, has expired and added pars. (1) and (2).

Subsec. (c). Pub. L. 94-455 struck out "or his delegate" following "Secretary" wherever appearing.

Pub. L. 94-452 reenacted subsec. (c) without change.

Subsec. (d). Pub. L. 94-452 reenacted subsec. (d) without change.

Subsec. (e). Pub. L. 94-452 struck out subsec. (e) relating to the applicability of this part with respect to any company which became a bank holding company as a result of Pub. L. 89-485.

Effective Date of 1976 Amendment

Section 2(d)(1) of Pub. L. 94-452 provided that the amendment by section 2(a) of Pub. L. 94-452 would be effective on Oct. 1, 1977, with respect to distributions after July 7, 1970, in taxable years ending after July 7, 1970.

Section Referred to in Other Sections

This section is referred to in section 1103 of this title.

§ 1103. Definitions

(a) Bank holding company; Bank Holding Company Act

For purposes of this part—

(1) Bank holding company

The term "bank holding company" means—

(A) a bank holding company within the meaning of section 2(a) of the Bank Holding Company Act, or

(B) a bank holding company subsidiary within the meaning of section 2(d) of such Act.

(2) Bank Holding Company Act

The term "Bank Holding Company Act" means the Bank Holding Company Act of 1956, as amended through December 31, 1970 (12 U.S.C. 1841 et seq.).

(b) Qualified bank holding corporation

(1) In general

Except as provided in paragraph (2), for purposes of this part the term "qualified bank holding corporation" means any corporation (as defined in section 7701(a)(3)) which is a bank holding company and which holds prohibited property acquired by it—

(A) on or before July 7, 1970,

(B) in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(C) in exchange for all of its stock in an exchange described in section 1101(c)(2) or (c)(3).

(2) Limitations

(A) A bank holding company shall not be a qualified bank holding corporation, unless it would have been a bank holding company on July 7, 1970, if the Bank Holding Company Act Amendments of 1970 had been in effect on such date, or unless it is a bank holding company determined solely by reference to—

(i) property acquired by it on or before July 7, 1970,

(ii) property acquired by it in a distribution in which gain to such corporation with respect to the receipt of such property was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) property acquired by it in exchange for all of its stock in an exchange described in section 1101(c)(2) or (3).

For purposes of this subparagraph, property held by a corporation having control of the corporation or by a subsidiary of the corporation shall be treated as held by the corporation.

(B) A bank holding company shall not be a qualified bank holding corporation by reason of property described in subparagraph (B) of paragraph (1) or clause (ii) of subparagraph (A) of this paragraph, unless such property was acquired in a distribution with respect to stock, which stock was acquired by such bank holding company—

(i) on or before July 7, 1970,

(ii) in a distribution (with respect to stock held by it on July 7, 1970, or with respect to stock in respect of which all previous applications of this clause are satisfied) with respect to which gain to it was not recognized by reason of subsection (a) or (b) of section 1101, or

(iii) in exchange for all of its stock in an exchange described in section 1101(c)(2) or (3).

(C) A corporation shall be treated as a qualified bank holding corporation only if the Board certifies that it satisfies the foregoing requirements of this subsection.

(3) Certain successor corporations

For purposes of this subsection, a successor corporation in a reorganization described in section 368(a)(1)(F) shall succeed to the status of its predecessor corporation as a qualified bank holding corporation.

(c) Prohibited property

For purposes of this part, the term "prohibited property" means, in the case of any bank holding company, property (other than nonexempt property) the disposition of which would be necessary or appropriate to effectuate section 4 of the Bank Holding Company Act if such company continued to be a bank holding company beyond the period (including any extensions thereof) specified in subsection (a) of such section. The term "prohibited property" also includes shares of any company not in excess of 5 percent of the outstanding voting shares of such company if the prohibitions of section 4 of such Act apply to the shares of such company in excess of such 5 percent.

(d) Nonexempt property

For purposes of this part, the term "nonexempt property" means—

(1) obligations (including notes, drafts, bills of exchange, and bankers' acceptances) having a maturity at the time of issuance of not exceeding 24 months, exclusive of days of grace,

(2) securities issued by or guaranteed as to principal or interest by a government or subdivision thereof or by any instrumentality of a government or subdivision, or

(3) money, and the right to receive money not evidenced by a security or obligation (other than a security or obligation described in paragraph (1) or (2)).

(e) Board

For purposes of this part, the term "Board" means the Board of Governors of the Federal Reserve System.

(f) Control; subsidiary

For purposes of this part—

(1) Control

Except as provided in section 1102(c)(3), a corporation shall be treated as having control of another corporation if such corporation has control (within the meaning of section 2(a)(2) of the Bank Holding Company Act) of such other corporation.

(2) Subsidiary

The term "subsidiary" has the meaning given to such term by section 2(d) of the Bank Holding Company Act.

(g) Election to forego grandfather provision for all property representing pre-June 30, 1968, activities

Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain the proviso of section 4(a)(2) thereof. Any election under this subsection shall apply to all property described in such proviso and shall be made at such time and in such manner as the Secretary may by regulations prescribe. Any such election, once made, shall be irrevocable. An election under this subsection or subsection (h) shall not apply unless the final certification referred to in section 1101(e) or section 6158(c)(2), as the case may be, in-

cludes a certification by the Board that the bank holding company has disposed of either all banking property or all nonbanking property.

(h) Election to divest all banking or nonbanking property in case of certain closely held bank holding companies

Any bank holding company may elect, for purposes of this part and section 6158, to have the determination of whether property is property described in subsection (c) or is property eligible to be distributed without recognition of gain under section 1101(b)(1) made under the Bank Holding Company Act as if such Act did not contain clause (ii) of section 4(c) of such Act. Any election under this subsection shall apply to all property described in subsection (c), or to all property eligible to be distributed without recognition of gain under section 1101(b)(1), as the case may be, and shall be made at such time and in such manner as the Secretary may by regulations prescribe. Any such election, once made, shall be irrevocable.

(Added May 9, 1956, ch. 240, § 10(a), 70 Stat. 144, and amended Oct. 2, 1976, Pub. L. 94-452, § 2(a), 90 Stat. 1509; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834.)

REFERENCES IN TEXT

The Bank Holding Company Act, referred to in subsecs. (a), (g), and (h), is the Bank Holding Company Act of 1956, as amended through Dec. 31, 1970, act May 9, 1956, ch. 240, 70 Stat. 133, as amended, which is classified principally to chapter 17 (§ 1841 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables.

Section 2 of the Bank Holding Company Act, referred to in subsecs. (a)(1) and (f), is section 2 of the Bank Holding Company Act of 1956, as amended through Dec. 31, 1970, which is classified to section 1841 of Title 12, Banks and Banking.

The Bank Holding Company Act Amendments of 1970, referred to in subsec. (b)(2)(A), is Pub. L. 91-607, Dec. 31, 1970, 84 Stat. 1760. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1841 of Title 12, Banks and Banking, and Tables.

Section 4 of the Bank Holding Company Act, referred to in subsecs. (c), (g), and (h), is section 4 of the Bank Holding Company Act of 1956, as amended through Dec. 31, 1970, which is classified to section 1843 of Title 12, Banks and Banking.

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-452 incorporated existing provisions in par. (1)(A) substituting "section 2(a)" for "section 2" and deleting "of 1956" following "Bank Holding Company Act" and added pars. (1)(B) and (2).

Subsec. (b). Pub. L. 94-452 substituted "July 7, 1970" for "May 15, 1955" wherever appearing, struck out "of 1956" following "Bank Holding Company Act" wherever appearing, added in par. (2)(A) provision that for purpose of this subparagraph, property held by a corporation having control of the corporation or by a subsidiary of the corporation shall be treated as held by the corporation, and added par. (3).

Subsec. (c). Pub. L. 94-452 struck out "of 1956" following "Bank Holding Company Act" and "or in section 1101(c)(2)(B) of this part, as the case may be" following "subsection (a) of such section" and substituted provisions defining prohibited property to also include shares of any company not in excess of 5% of the outstanding shares of such company if prohibition of section 4 of Bank Holding Company Act apply to shares of such company in excess of such 5% for provisions defining prohibited property to not include shares of any company held by a bank holding company to the extent that the prohibitions of section 4 of the Bank Holding Company Act do not apply to the ownership by such bank holding company of such property by reason of subsec. (c)(5) of such section.

Subsecs. (d), (e). Pub. L. 94-452 reenacted subsecs. without change.

Subsec. (f). Pub. L. 94-452 added subsec. (f).

Subsec. (g). Pub. L. 94-455 struck out "or his delegate" following "Secretary".

Pub. L. 94-452 added subsec. (g).

Subsec. (h). Pub. L. 94-455 struck out "or his delegate" following "Secretary".

Pub. L. 94-452 added subsec. (h).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(d)(1) of Pub. L. 94-452 provided that the amendment by section 2(a) of Pub. L. 94-452 would be effective on Oct. 1, 1977, with respect to distributions after July 7, 1970, in taxable years ending after July 7, 1970.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6158 of this title.

Subchapter P—Capital Gains and Losses

PART I—TREATMENT OF CAPITAL GAINS

Sec.
1201. Alternative tax for corporations.

AMENDMENTS

1978—Pub. L. 95-600, title IV, § 401(b)(6), Nov. 6, 1978, 92 Stat. 2867, substituted in item 1201 "Alternative tax for corporations" for "Alternative tax".

§ 1201. Alternative tax for corporations

(a) Corporations

If for any taxable year a corporation has a net capital gain, then, in lieu of the tax imposed by sections 11, 511, 821(a) or (c), and 831(a), there is hereby imposed a tax (if such tax is less than the tax imposed by such sections) which shall consist of the sum of—

(1) a tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this subsection had not been enacted, plus

(2) a tax of 28 percent of the net capital gain.

(b) Cross references

For computation of the alternative tax—

(1) in the case of life insurance companies, see section 802(a)(2);

(2) in the case of regulated investment companies and their shareholders, see section 852(b)(3)(A) and (D); and

(3) in the case of real estate investment trusts, see section 857(b)(3)(A).

(c) Taxable years which include January 1, 1979

If for any taxable year beginning before January 1, 1979, and ending after December 31, 1978, a corporation has a net capital gain, then subsection (a) shall be applied by substituting for the language of paragraph (2) the following:

(2)(A) a tax of 28 percent of the lesser of—

(i) the net capital gain for the taxable year, or

(ii) the net capital gain taking into account only sales and exchanges after December 31, 1978, plus

(B) a tax of 30 percent of the excess of—

(i) the net capital gains for the taxable year, over

(ii) the amount of net capital gain taken into account under subparagraph (A).

(As amended Nov. 6, 1978, Pub. L. 95-600, title IV, §§ 401(a), 403(a), (b), 92 Stat. 2866, 2868.)

AMENDMENTS

1978—Pub. L. 95-600, § 401(a)(3), in the section catchline added "for corporations" following "tax".

Subsec. (a)(2). Pub. L. 95-600, § 403(a), substituted "28 percent" for "30 percent".

Subsec. (b). Pub. L. 95-600, § 401(a)(1), (2), redesignated former subsec. (d) as (b). Former subsec. (b), relating to imposition of the alternative tax on other taxpayers, was struck out.

Subsec. (c). Pub. L. 95-600, §§ 401(a)(1), 403(b), added subsec. (c). Former subsec. (c), which related to computation of the alternative tax where the capital gain exceeds $50,000, was struck out.

Subsec. (d). Pub. L. 95-600, § 401(a)(2), redesignated former subsec. (d) as (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 403(d)(1) of Pub. L. 95-600 provided that: "The amendments made by subsections (a) [amending subsec. (a)(2) of this section] and (b) [amending subsec. (c) of this section] shall apply to taxable years ending after December 31, 1978."

Section 401(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (b) to (d) of this section and sections 3(b)(1)(B) to (D), 5(a)(3) to (5), 871(b)(1), 911(d)(1), and 1304(b)(2) to (4) of this title] shall apply to taxable years beginning after December 31, 1978."

STUDY OF EFFECTS OF CHANGES IN THE TAX TREATMENT OF CAPITAL GAINS ON STIMULATING INVESTMENT AND ECONOMIC GROWTH

Section 555 of Pub. L. 95-600 provided that: "Not later than September 30, 1981, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate a report on the effectiveness of the changes made by this title in the tax treatment of capital gains of individuals and corporations in stimulating investment and increasing the rate of economic growth. The report shall also include an analysis of the effects these changes had on employment growth and on income tax revenues."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 57, 527, 528, 594, 691, 802, 821, 852, 857, 877, 882, 904, 1378, 1381, 6154, 6425, 6655 of this title.

§ 1202. Deduction for capital gains

(a) In general

If for any taxable year a taxpayer other than a corporation has a net capital gain, 60 percent of the amount of the net capital gain shall be a deduction from gross income.

(b) Estates and trusts

In the case of an estate or trust, the deduction shall be computed by excluding the portion (if any) of the gains for the taxable year from sales or exchanges of capital assets which, under sections 652 and 662 (relating to inclusions of amounts in gross income of beneficiaries of trusts), is includible by the income beneficiaries as gain derived from the sale or exchange of capital assets.

(c) Taxable years which include November 1, 1978

If for any taxable year beginning before November 1, 1978, and ending after October 31, 1978, a taxpayer other than a corporation has a net capital gain, the deduction under subsection (a) shall be the sum of—

(1) 60 percent of the lesser of—

(A) the net capital gain for the taxable year, or

(B) the net capital gain taking into account only sales and exchanges after October 31, 1978, plus

(2) 50 percent of the excess of—

(A) the net capital gain for the taxable year, over

(B) the amount of net capital gain taken into account under paragraph (1).

(As amended Nov. 6, 1978, Pub. L. 95-600, title IV, § 402(a), 92 Stat. 2867.)

AMENDMENTS

1978—Pub. L. 95-600 designated existing provisions as subsecs. (a) and (b) and, in subsec. (a) as so designated, substituted "60 percent" for "50 percent", and added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 402(c)(1) of Pub. L. 95-600 provided that: "The amendments made by subsection (a) [amending this section] and (b)(1) [amending section 57(a)(9)(A) of this title] shall apply to taxable years ending after October 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 62, 163, 172, 642, 643, 691, 871 of this title.

PART II—TREATMENT OF CAPITAL LOSSES

§ 1211. Limitation on capital losses

[*See main edition for text of* (a)]

(b) Other taxpayers

(1) In general

In the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) whichever of the following is smallest:

(A) the taxable income for the taxable year reduced (but not below zero) by the zero bracket amount,

(B) the applicable amount, or

(C) the sum of—

(i) the excess of the net short-term capital loss over the net long-term capital gain, and

(ii) one-half of the excess of the net long-term capital loss over the net short-term capital gain.

[*See main edition for text of* (2) *and* (3)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(14), 91 Stat. 138.)

AMENDMENTS

1977—Subsec. (b)(1)(A). Pub. L. 95-30 inserted "reduced (but not below zero) by the zero bracket amount" following "taxable year".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 165, 221, 535, 691, 1212, 1222, 1231 of this title.

§ 1212. Capital loss carrybacks and carryovers

(a) Corporations

(1) In general

If a corporation has a net capital loss for any taxable year (hereinafter in this paragraph referred to as the "loss year"), the amount thereof shall be—

[See main edition for text of (A) and (B)]

(C) a capital loss carryover—

(i) in the case of a regulated investment company (as defined in section 851) to each of the 8 taxable years succeeding the loss year, and

(ii) to the extent such loss is attributable to a foreign expropriation capital loss, to each of the 10 taxable years succeeding the loss year.

and shall be treated as a short-term capital loss in each such taxable year. The entire amount of the net capital loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried, and the portion of such loss which shall be carried to each of the other taxable years to which such loss may be carried shall be the excess, if any, of such loss over the total of the capital gain net income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the capital gain net income for any such prior taxable year shall be computed without regard to the net capital loss for the loss year or for any taxable year thereafter. In the case of any net capital loss which cannot be carried back in full to a preceding taxable year by reason of clause (ii) of subparagraph (A), the capital gain net income for such prior taxable year shall in no case be treated as greater than the amount of such loss which can be carried back to such preceding taxable year upon the application of such clause (ii).

[See main edition for text of (2) to (4); (b)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(k), 92 Stat. 2942.)

AMENDMENTS

1978—Subsec. (a)(1)(C)(ii). Pub. L. 95-600 substituted "succeeding the loss year" for "exceeding the loss year".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(1)(C)(ii) by section 703(k) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

§ 1222. Other terms relating to capital gains and losses

For purposes of this subtitle—

(1) Short-term capital gain

The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent such gain is taken into account in computing gross income.

(2) Short-term capital loss

The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

(3) Long-term capital gain

The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 1 year, if and to the extent such gain is taken into account in computing gross income.

(4) Long-term capital loss

The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 1 year, if and to the extent that such loss is taken into account in computing taxable income.

[See main edition for text of (5) to (11) and closing paragraph]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(a)(2), 90 Stat. 1731.)

AMENDMENTS

1976—Pars. (1) to (4). Pub. L. 94-455, § 1402(a)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(a)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in pars. (1) to (4) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1223. Holding period of property

For purpose of this subtitle—

[See main edition for text of (1) to (10)]

(11) In the case of a person acquiring property from a decedent or to whom property passed from a decedent (within the meaning of section 1014(b)), if—

(A) the basis of such property in the hands of such person is determined under section 1014 or 1023, and

(B) such property is sold or otherwise disposed of by such person within 1 year after the decedent's death,

then such person shall be considered to have held such property for more than 1 year.

[See main edition for text of (12)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732; Nov. 6, 1978,

Pub. L. 95-600, title VII, § 702(c)(5), 92 Stat. 2927.)

AMENDMENTS

1978—Par. (11)(A). Pub. L. 95-600 inserted reference to determination of basis of property under section 1023.

1976—Par. (11). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of par. (11)(A) by section 702(c)(5) of Pub. L. 95-600 to take effect as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94-455, see section 702(c)(10) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1014 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in par. (11) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.
1254. Gain from disposition of interest in oil, gas, or geothermal property.
1255. Gain from disposition of section 126 property.

AMENDMENTS

1978—Pub. L. 95-618, title IV, § 402(c)(4), Nov. 9, 1978, 92 Stat. 3202, in item 1254 substituted "oil, gas, or geothermal" for "oil or gas".

Pub. L. 95-600, title V, § 543(c)(2), Nov. 6, 1978, 92 Stat. 2890, added item 1255.

§ 1231. Property used in the trade or business and involuntary conversions

(a) General rule

If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 1 year into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 1 year. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

[*See main edition for text of (1)*]

(2) losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 1 year shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 1 year, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) Definition of property used in the trade or business

For purposes of this section—

(1) General rule

The term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in the trade or business, held for more than 1 year, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business,

(C) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property, held by a taxpayer described in paragraph (3) of section 1221, or

(D) a publication of the United States Government (including the Congressional Record) which is received from the United States Government, or any agency thereof, other than by purchase at the price at which it is offered for sale to the public, and which is held by a taxpayer described in paragraph (6) of section 1221.

[*See main edition for text of (2) and (3)*]

(4) Unharvested crop

In the case of an unharvested crop on land used in the trade or business and held for more than 1 year, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732; Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(ee)(1), 92 Stat. 2924.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600 added subpar. (D).

1976—Subsecs. (a), (b)(1), (4). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(ee)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [adding subsec. (b)(1)(D) of this section] shall apply with respect to sales, exchanges, and contributions made after October 4, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsecs. (a), (b)(1), (4) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1232. Bonds and other evidences of indebtedness

(a) General rule

For purposes of this subtitle, in the case of bonds, debentures, notes, or certificates or other evidences of indebtedness, which are capital assets in the hands of the taxpayer, and which are issued by any corporation, or by any government or political subdivision thereof—

[See main edition for text of (1)]

(2) Sale or exchange

(A) Corporate bonds issued after May 27, 1969

Except as provided in subparagraph (C), on the sale or exchange of bonds or other evidences of indebtedness issued by a corporation after May 27, 1969, held by the taxpayer more than 1 year, any gain realized shall (except as provided in the following sentence) be considered gain from the sale or exchange of a capital asset held for more than 1 year. If at the time of original issue there was an intention to call the bond or other evidence of indebtedness before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to the original issue discount (as defined in subsection (b)) reduced by the portion of original issue discount previously includible in the gross income of any holder (as provided in paragraph (3)(B)) shall be considered as ordinary income.

(B) Corporate bonds issued on or before May 27, 1969, and government bonds

Except as provided in subparagraph (C), on the sale or exchange of bonds or other evidences of indebtedness issued by a government or political subdivision thereof after December 31, 1954, or by a corporation after December 31, 1954, and on or before May 27, 1969, held by the taxpayer more than 1 year, any gain realized which does not exceed—

(i) an amount equal to the original issue discount (as defined in subsection (b)), or

(ii) if at the time of original issue there was no intention to call the bond or other evidence of indebtedness before maturity, an amount which bears the same ratio to the original issue discount (as defined in subsection (b)) as the number of complete months that the bond or other evidence of indebtedness was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income. Gain in excess of such amount shall be considered ordinary income held more than 1 year.

[See main edition for text of (C) and (D), (3); (b) to (d)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (a)(2)(A), (B). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year" wherever appearing.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (a)(2)(A), (B) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1233. Gains and losses from short sales

[See main edition for text of (a)]

(b) Short-term gains and holding periods

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 1 year (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 1 year (notwithstanding the period of time any property used to close such short sale has been held); and

[See main edition for text of (2)]

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

[See main edition for text of (c)]

(d) Long-term losses

If on the date of such short sale substantially identical property has been held by the taxpayer for more than 1 year, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 1 year (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding section 1234).

(e) Rules for application of section

[See main edition for text of (1) to (3)]

(4)(A) In the case of a taxpayer who is a dealer in securities (within the meaning of section 1236)—

(i) if, on the date of a short sale of stock, substantially identical property which is a capital asset in the hands of the taxpayer has been held for not more than 1 year, and

(ii) if such short sale is closed more than 20 days after the date on which it was made,

subsection (b)(2) shall apply in respect of the holding period of such substantially identical property.

[*See main edition for text of (B), (f) and (g)*]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsecs. (b), (d), (e)(4)(i). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsecs. (b), (d), (e)(4)(i) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1234. Options to buy or sell

[*See main edition for text of (a)*]

(b) Treatment of grantor of option in the case of stock, securities, or commodities

(1) General rule

In the case of the grantor of the option, gain or loss from any closing transaction with respect to, and gain on lapse of, an option in property shall be treated as a gain or loss from the sale or exchange of a capital asset held not more than 1 year.

[*See main edition for text of (2) and (3)*]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (b)(1). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (b)(1) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1235. Sale or exchange of patents

(a) General

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 1 year, regardless of whether or not payments in consideration of such transfer are—

(1) payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) contingent on the productivity, use, or disposition of the property transferred.

[*See main edition for text of (b) to (e)*]

(As amended Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (a) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1236. Dealers in securities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 512, 1058, 1233 of this title.

§ 1239. Gain from sale of depreciable property between certain related taxpayers

(a) Treatment of gain as ordinary income

In the case of a sale or exchange of property, directly or indirectly, between related persons, any gain recognized to the transferor shall be treated as ordinary income if such property is, in the hands of the transferee, of a character which is subject to the allowance for depreciation provided in section 167.

[*See main edition for text of (b) and (c)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(v)(1), 92 Stat. 2920.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, substituted "of a character which is subject to the allowance for depreciation provided in section 167" for "subject to the allowance for depreciation provided in section 167".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(v)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending subsec. (a) of this section] shall apply as if included in the amendment made to section 1239 of the Internal Revenue Code of 1954 by section 2129(a) of the Tax Reform Act of 1976 [section 2129(a) of Pub. L. 94-455]."

§ 1244. Losses on small business stock

[*See main edition for text of (a)*]

(b) Maximum amount for any taxable year

For any taxable year the aggregate amount treated by the taxpayer by reason of this section as an ordinary loss shall not exceed—

(1) $50,000, or

(2) $100,000, in the case of a husband and wife filing a joint return for such year under section 6013.

(c) Section 1244 stock defined

(1) In general

For purposes of this section, the term "section 1244 stock" means common stock in a domestic corporation if—

(A) at the time such stock is issued, such corporation was a small business corporation,

(B) such stock was issued by such corporation for money or other property (other than stock and securities), and

(C) such corporation, during the period of its 5 most recent taxable years ending before the date the loss on such stock was sustained, derived more than 50 percent of its aggregate gross receipts from sources other than royalties, rents, dividends, interests, annuities, and sales or exchanges of stocks or securities.

(2) Rules for application of paragraph (1)(C)

(A) Period taken into account with respect to new corporations

For purposes of paragraph (1)(C), if the corporation has not been in existence for 5 taxable years ending before the date the loss on the stock was sustained, there shall be substituted for such 5-year period—

(i) the period of the corporation's taxable years ending before such date, or

(ii) if the corporation has not been in existence for 1 taxable year ending before such date, the period such corporation has been in existence before such date.

(B) Gross receipts from sales of securities

For purposes of paragraph (1)(C), gross receipts from the sales or exchanges of stock or securities shall be taken into account only to the extent of gains therefrom.

(C) Nonapplication where deductions exceed gross income

Paragraph (1)(C) shall not apply with respect to any corporation if, for the period taken into account for purposes of paragraph (1)(C), the amount of the deductions allowed by this chapter (other than by sections 172, 243, 244, and 245) exceeds the amount of gross income.

(3) Small business corporation defined

(A) In general

For purposes of this section, a corporation shall be treated as a small business corporation if the aggregate amount of money and other property received by the corporation for stock, as a contribution to capital, and as paid-in surplus, does not exceed $1,000,000. The determination under the preceding sentence shall be made as of the time of the issuance of the stock in question but shall include amounts received for such stock and for all stock theretofore issued.

(B) Amount taken into account with respect to property

For purposes of subparagraph (A), the amount taken into account with respect to any property other than money shall be the amount equal to the adjusted basis to the corporation of such property for determining gain, reduced by any liability to which the property was subject or which was assumed by the corporation. The determination under the preceding sentence shall be made as of the time the property was received by the corporation.

(d) Special rules

[See main edition for text of (1)]

(2) Recapitalizations, changes in name, etc.

To the extent provided in regulations prescribed by the Secretary common stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c)(1) (other than subparagraph (C) thereof), or which is received in a reorganization described in section 368(a)(1)(F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1)(C) and (3)(A) of subsection (c), a successor corporation in a reorganization described in section 368(a)(1)(F) shall be treated as the same corporation as its predecessor.

[See main edition for text of (3) and (4); (e)]

(As amended Pub. L. 95-600, title III, § 345(a)-(d), Nov. 6, 1978, 92 Stat. 2844, 2845.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600, § 345(b), substituted in par. (1) "$50,000" for "$25,000" and in par. (2) "$100,000" for "$50,000".

Subsec. (c). Pub. L. 95-600, § 345(a), (c), among other changes, substituted provisions permitting a corporation to issue common stock under the provisions of this section without a written plan for provisions requiring that a written plan to issue section 1244 stock must be adopted by the issuing corporation and increased the amount of section 1244 stock that a qualified small business corporation may issue from $500,000 to $1,000,000.

Subsec. (d)(2). Pub. L. 95-600, § 345(d), substituted "subparagraph (C)" for "subparagraph (E)" and "paragraphs (1)(C) and (3)(A)" for "paragraphs (1)(E) and (2)(A)".

1976—Subsec. (d)(2). Pub. L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" following "Secretary".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 345(e) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (b)(1), (2), (c)(1)-(3), (d)(2) of this section] shall apply to stock issued after the date of the enactment of this Act [Nov. 6, 1978]."

§ 1245. Gain from dispositions of certain depreciable property

(a) General rule

[See main edition for text of (1)]

(2) Recomputed basis

For purposes of this section, the term "recomputed basis" means—

[See main edition for text of (A) to (C)]

(D) with respect to any property referred to in paragraph (3)(D), its adjusted basis recomputed by adding thereto all adjustments attributable to periods beginning with the first month for which a deduction for amortization is allowed under section 169, 185, or 190

reflected in such adjusted basis on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for depreciation, or for amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 184, 185, 188, 190, or (in the case of property described in paragraph (3)(C)) 191. For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed for depreciation, or for amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 184, 185, 188, 190, or (in the case of property described in paragraph

(3)(C)) 191 for any period was less than the amount allowable, the amount added for such period shall be the amount allowed. For purposes of this section, any deduction allowable under section 190 shall be treated as if it were a deduction allowable for amortization.

(3) Section 1245 property

For purposes of this section, the term "section 1245 property" means any property which is or has been property of a character subject to the allowance for depreciation provided in section 167 (or subject to the allowance of amortization provided in section 185) and is either—

[See main edition for text of (A) to (C)]

(D) so much of any real property (other than any property described in subparagraph (B)) which has an adjusted basis in which there are reflected adjustments for amortization under section 169, 185, 188, or 190.

(4) Special rule for player contracts

[See main edition for text of (A)]

(B) Previously unrecaptured depreciation with respect to initial contracts

For purposes of subparagraph (A)(i), the term "previously unrecaptured depreciation" means the excess (if any) of—

(i) the sum of the deduction allowed or allowable to the taxpayer transferor for the depreciation attributable to periods after December 31, 1975, of any player contracts acquired by him at the time of acquisition of such franchise, plus the deduction allowed or allowable for losses incurred after December 31, 1975, with respect to such player contracts acquired at the time of such acquisition, over

(ii) the aggregate of the amounts described in clause (i) treated as ordinary income by reason of this section with respect to prior dispositions of such player contracts acquired upon acquisition of the franchise.

(C) Previously unrecaptured depreciation with respect to contracts transferred

For purposes of subparagraph (A)(ii), the term "previously unrecaptured depreciation" means the amount of any deduction allowed or allowable to the taxpayer transferor for the depreciation of any contracts involved in such transfer.

[See main edition for text of (D); (b) to (d)]

(As amended Pub. L. 95-600, title VII, § 701(f)(3)(A), (B), (w)(1), (2), Nov. 6, 1978, 92 Stat. 2901, 2920.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-600, § 701(f)(3)(A), deleted from the listed sections in subpar. (D) reference to 191 and inserted parenthetical text "(in the case of property described in paragraph (3)(C))" preceding "191" in two instances in next to last sentence.

Subsec. (a)(3)(D). Pub. L. 95-600, § 701(f)(3)(B), deleted from the listed sections reference to 191.

Subsec. (a)(4)(B). Pub. L. 95-600, § 701(w)(2), added "attributable to periods after December 31, 1975," following "for the depreciation", "incurred after December 31, 1975," following "allowable for losses", and "described in clause (i)" following "of the amounts".

Subsec. (a)(4)(C). Pub. L. 95-600, § 701(w)(1), struck out provisions relating to the aggregate of the amounts treated as ordinary income.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2), (3)(D) by section 701(f)(3)(A), (B) of Pub. L. 95-600 effective as if included within the amendment of subsec. (a)(2), (3)(D) by section 2124 of Pub. L. 94-455, see section 701(f)(8) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 191 of this title.

Section 701(w)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsec. (a)(4)(B), (C) of this section] shall apply to transfers of player contracts in connection with any sale or exchange of a franchise after December 31, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 163, 167, 169, 170, 191, 341, 453, 465, 512, 613, 617, 751, 1250, 1251, 1252, 1255 of this title.

§ 1246. Gain on foreign investment company stock

(a) Treatment of gain as ordinary income

[See main edition for text of (1) to (3)]

(4) Holding period of stock must be more than 1 year

This section shall not apply with respect to the sale or exchange of stock where the holding period of such stock as of the date of such sale or exchange is 1 year or less.

[See main edition for text of (b) to (f)]

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (a)(4). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (a)(4) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1247. Election by foreign investment companies to distribute income currently

[See main edition for text of (a) to (h)]

(i) Loss on sale or exchange of certain stock held less than 1 year

If—

(1) under this section, any qualified shareholder treats any amount designated under subsection (a)(1)(B) with respect to a share of stock as long-term capital gain, and

(2) such share is held by the taxpayer for less than 1 year,

then any loss on the sale or exchange of such share shall, to the extent of the amount described in paragraph (1), be treated as loss from the sale or exchange of a capital asset held for more than 1 year.

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (i). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year" wherever appearing.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (i) and that such substitution would be effective for taxable years beginning after Dec. 31, 1977.

§ 1248. Gain from certain sales or exchanges of stock in certain foreign corporations

[See main edition for text of (a)]

(b) Limitation on tax applicable to individuals

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 1 year, the tax attributable to an amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

[See main edition for text of (1)]

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 1 year, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

[See main edition for text of (c) to (f)]

(g) Exceptions

This section shall not apply to—

[See main edition for text of (1) and (2)]

(3) any amount to the extent that such amount is, under any other provision of this title, treated as—

(A) a dividend (other than an amount treated as a dividend under subsection (f)),

(B) ordinary income, or

(C) gain from the sale of an asset held for not more than 1 year.

[See main edition for text of (h)]

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732.)

AMENDMENTS

1976—Subsecs. (b), (g)(3)(C). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsecs. (b), (g)(3)(C) and that such substitution would be effective for taxable years after beginning after Dec. 31, 1977.

§ 1250. Gains from dispositions of certain depreciable realty

[See main edition for text of (a)]

(b) Additional depreciation defined

For purposes of this section—

[See main edition for text of (1) and (2)]

(3) Depreciation adjustments

The term "depreciation adjustments" means, in respect of any property, all adjustments attributable to periods after December 31, 1963, reflected in the adjusted basis of such property on account of deductions (whether in respect of the same or other property) allowed or allowable to the taxpayer or to any other person for exhaustion, wear and tear, obsolescence, or amortization (other than amortization under section 168 (as in effect before its repeal by the Tax Reform Act of 1976), 169, 185, 188, or 190). For purposes of the preceding sentence, if the taxpayer can establish by adequate records or other sufficient evidence that the amount allowed as a deduction for any period was less than the amount allowable, the amount taken into account for such period shall be the amount allowed.

(4) Additional depreciation attributable to rehabilitation expenditures

The term "additional depreciation" also means, in the case of section 1250 property with respect to which a depreciation or amortization deduction for rehabilitation expenditures was allowed under section 167(k) or 191, the depreciation or amortization adjustments allowed under such section to the extent attributable to such property, except that, in the case of such property held for more than one year after the rehabilitation expenditures so allowed were incurred, it means such adjustments only to the extent that they exceed the amount of the depreciation adjustments which would have resulted if such adjustments had been determined under the straight line method of adjustment without regard to the useful life permitted under section 167(k) or 191.

[See main edition for text of (c)]

(d) Exceptions and limitations

[See main edition for text of (1) to (6)]

(7) Disposition of principal residence

Subsection (a) shall not apply to a disposition of—

(A) property to the extent used by the taxpayer as his principal residence (within the meaning of section 1034, relating to rollover of gain on sale of principal residence), and

(B) property in respect of which the taxpayer meets the age and ownership requirements of section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) but only to the extent that he meets the use requirements of such section in respect of such property.

[See main edition for text of (8) to (10); (e) to (i)]

(As amended Pub. L. 95-600, title IV, §§ 404(c)(7), 405(c)(4), title VII, § 701(f)(3)(C), (E), Nov. 6, 1978, 92 Stat. 2870, 2871, 2901.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-600, § 701(f)(3)(C), deleted from the listed sections reference to 191.

Subsec. (b)(4). Pub. L. 95-600, § 701(f)(3)(E), inserted reference to amortization deduction, amortization adjustments, and to section 191 in two instances.

Subsec. (d)(7)(A). Pub. L. 95-600, § 405(c)(4), substituted "relating to rollover of gain on sale of principal residence" for "relating to sale or exchange of residence".

Subsec. (d)(7)(B). Pub. L. 95-600, § 404(c)(7), added provisions relating to a one-time exclusion and principal residence and substituted "55" for "65".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(3), (4) by section 701(f)(3)(C)(E) of Pub. L. 95-600 effective as if included within the amendment of subsec. (b)(3) and (4) by section 2124 of Pub. L. 94-455, see section 701(f)(8) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 191 of this title.

Amendment of subsec. (d)(7)(A) by section 405(c)(4) of Pub. L. 95-600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1034 of this title.

Amendment of subsec. (d)(7)(B) by section 404(c)(7) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 121 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 163, 167, 170, 189, 341, 453, 644, 751 of this title.

§ 1251. Gain from disposition of property used in farming where farm losses offset nonfarm income

[See main edition for text of (a) to (d)]

(e) Definitions

For purposes of this section—

(1) Farm recapture property

The term "farm recapture property" means—

(A) any property (other than section 1250 property) described in paragraph (1) (relating to business property held for more than 1 year), (3) (relating to livestock), or (4) (relating to an unharvested crop) of section 1231(b) which is or has been used in the trade or business of farming by the taxpayer or by a transferor in a transaction described in subsection (b)(5), and

[See main edition for text of (B); (2) to (5)]

(As amended Pub. L. 94-455, title XIV, § 1402(b)(2), Oct. 4, 1976, 90 Stat. 1732.)

AMENDMENTS

1976—Subsec. (e)(1)(A). Pub. L. 94-455, § 1402(b)(2) provided that "9 months" would be changed to "1 year".

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1402(b)(2) of Pub. L. 94-455 provided in part for the substitution of "1 year" for "9 months" in subsec. (e)(1)(A) and that such substitution would be effective for taxable years after beginning after Dec. 31, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 341, 453, 751, 1252 of this title.

§ 1252. Gain from disposition of farm land

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 341, 453, 751 of this title.

§ 1254. Gain from disposition of interest in oil, gas, or geothermal property

(a) General rule

(1) Ordinary income

If oil, gas, or geothermal property is disposed of after December 31, 1975, the lower of—

[See main edition for text of (A) and (B)]

shall be treated as gain which is ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Disposition of portion of property

For purposes of paragraph (1)—

(A) In the case of the disposition of a portion of an oil, gas, or geothermal property (other than an undivided interest), the entire amount of the aggregate expenditures described in paragraph (1)(A) with respect to such property shall be treated as allocable to such portion to the extent of the amount of the gain to which paragraph (1) applies.

(B) In the case of the disposition of an undivided interest in an oil, gas, or geothermal property (or a portion thereof), a proportionate part of the expenditures described in paragraph (1)(A) with respect to such property shall be treated as allocable to such undivided interest to the extent of the amount of the gain to which paragraph (1) applies.

This paragraph shall not apply to any expenditures to the extent the taxpayer establishes to the satisfaction of the Secretary that such expenditures do not relate to the portion (or interest therein) disposed of.

(3) Oil, gas, or geothermal property

The term "oil, gas, or geothermal property" means any property (within the meaning of section 614) with respect to which any expenditures described in paragraph (1)(A) are properly chargeable.

[See main edition for text of (4); (b)]

(As amended Pub. L. 95-618, title IV, § 402(c)(1)-(3), Nov. 9, 1978, 92 Stat. 3202.)

AMENDMENTS

1978—Pub. L. 95-618, § 402(c)(3), in section heading substituted "oil, gas, or geothermal" for "oil or gas".

Subsec. (a)(1). Pub. L. 95-618, § 402(c)(1), substituted "oil, gas, or geothermal property" for "oil or gas property".

Subsec. (a)(2). Pub. L. 95-618, § 402(c)(1), substituted "oil, gas, or geothermal property" for "oil or gas property" wherever appearing.

Subsec. (a)(3). Pub. L. 95-618, § 402(c)(2), in par. heading substituted "Oil, gas, or geothermal" for "Oil

or gas" and in text substituted "The term 'oil, gas, or geothermal property' means" for "The term 'oil or gas property' means".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to wells commenced on or after Oct. 1, 1978, in taxable years ending on or after such date, see section 402(e) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 263 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 453, 751 of this title.

§ 1255. Gain from disposition of section 126 property

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if section 126 property is disposed of, the lower of—

(A) the applicable percentage of the aggregate payments, with respect to such property, excluded from gross income under section 126, or

(B) the excess of—

(i) the amount realized (in the case of a sale, exchange, or involuntary conversion), or the fair market value of such section 126 property (in the case of any other disposition), over

(ii) the adjusted basis of such property

shall be treated as ordinary income.

(2) Section 126 property

For purposes of this section, "section 126 property" means any property acquired, improved, or otherwise modified by the application of payments excluded from gross income under section 126.

(3) Applicable percentage

For purposes of this section, if section 126 property is disposed of less than 10 years after the date of receipt of payments excluded from gross income under section 126, the applicable percentage is 100 percent. If section 126 property is disposed of more than 10 years after such date, the applicable percentage is 100 percent reduced (but not below zero) by 10 percent for each year or part thereof in excess of 10 years such property was held after the date of receipt of the payments.

(b) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules applicable under section 1245 shall be applied for purposes of this section, and

(2) amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245.

(Added Pub. L. 95-600, title V, § 543(c)(1), Nov. 6, 1978, 92 Stat. 2890.)

EFFECTIVE DATE

Section effective with respect to grants made under the programs after Sept. 30, 1979, see section 543(d) of Pub. L. 95-600, set out as an Effective Date note under section 126 of this title.

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

PART I—INCOME AVERAGING

§ 1301. Limitation on tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 5 of this title.

§ 1302. Definition of averagable income; related definitions

[See main edition for text of (a)]

(b) Average base period income

For purposes of this part—

[See main edition for text of (1)]

(2) Base period income

The base period income for any taxable year is the taxable income for such year—

(A) increased by an amount equal to the excess of—

(i) the amount excluded from gross income under section 911 (relating to income earned by employees in certain camps) and subpart D of part III of subchapter N (sec. 931, and following, relating to income from sources within possessions of the United States), over

[See main edition for text of (ii) and (B)]

(3) Transitional rule for determining base period income

The base period income (determined under paragraph (2)) for any taxable year beginning before January 1, 1977, shall be increased by—

(A) $3,200 in the case of a joint return or a surviving spouse (as defined in section 2(a)),

(B) $2,200 in the case of an individual who is not married (within the meaning of section 143) and is not a surviving spouse (as so defined), or

(C) $1,600 in the case of a married individual (within the meaning of section 143) filing a separate return.

For purposes of this paragraph, filing status shall be determined as of the computation year.

[See main edition for text of (c)]

(As amended Pub. L. 95-30, title I, § 102(b)(15), May 23, 1977, 91 Stat. 138; Pub. L. 95-600, title I, § 101(d)(2), Nov. 6, 1978, 92 Stat. 2770; Pub. L. 95-615, § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100.)

AMENDMENTS

1978—Subsec. (b)(2)(A)(i). Pub. L. 95-615 substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)".

Subsec. (b)(3). Pub. L. 95-600 substituted provision increasing the base period income for any taxable year beginning before Jan. 1, 1977 by $3,200 in the case of a joint return or a surviving spouse, $2,200 in the case of an individual who is not married and is not a surviving spouse, or $1,600 in the case of a married individual filing a separate return for provision increasing the

base period income for any taxable year beginning before Jan. 1, 1977 by the amount of the taxpayer's zero bracket amount.

1977—Subsec. (b)(3). Pub. L. 95-30 added subsec. (b)(3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

§ 1304. Special rules

[See main edition for text of (a)]

(b) Certain provisions inapplicable

If the taxpayer chooses the benefits of this part for the taxable year, the following provisions shall not apply to him for such year:

(1) section 911 (relating to income earned by employees in certain camps),

(2) subpart D of part III of subchapter N (sec. 931 and following, relating to income from sources within possessions of the United States), and

(3) section 1348 (relating to 50-percent maximum rate on personal service income).

[See main edition for text of (c) to (f)]

(As amended Pub. L. 95-600, title IV, § 401(b)(5), Nov. 6, 1978, 92 Stat. 2867; Pub. L. 95-615, § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-615 substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)".

Subsec. (b)(3). Pub. L. 95-600 struck out par. (3), relating to alternative capital gains tax and redesignated former par. (4) as (3).

Subsec. (b)(4). Pub. L. 95-600 redesignated former subsec. (b)(4) as (b)(3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(2) to (4) by section 401(b)(5) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 401(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1201 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

PART V—CLAIM OF RIGHT

§ 1341. Computation of tax where taxpayer restores substantial amount held under claim of right

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 6213, 6411 of this title.

PART VI—MAXIMUM RATE ON PERSONAL SERVICE INCOME

§ 1348. 50-percent maximum rate on personal service income

[See main edition for text of (a)]

(b) Definitions

For purposes of this section—

(1) Personal service income

(A) In general

The term "personal service income" means any income which is earned income within the meaning of section 401(c)(2)(C) or section 911(b) or which is an amount received as a pension or annuity which arises from an employer-employee relationship or from tax-deductible contributions to a retirement plan. For purposes of this subparagraph, section 911(b) shall be applied without regard to the phrase ", not in excess of 30 percent of his share of net profits of such trade or business,".

[See main edition for text of (B)]

(2) Personal service taxable income

The personal service taxable income of an individual is the excess of—

[See main edition for text of (A)]

(B) the sum of the items of tax preference described in subsection (a) (other than paragraph (9)) of section 57 for the taxable year.

For purposes of subparagraph (A), the term "personal service net income" means personal service income reduced by any deductions allowable under section 62 which are properly allocable to or chargeable against such personal service income.

[See main edition for text of (c)]

(As amended Pub. L. 95-600, title IV, §§ 441(a), 442(a), title VII, § 701(x)(1), (2), Nov. 6, 1978, 92 Stat. 2878, 2920.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600 substituted in par. (1)(A) "pension or annuity which arises from an employer-employee relationship or from tax-deductible contributions to a retirement plan" for "pension or annuity", in par. (2)(B) "items of tax preference described in subsection (a) (other than paragraph (9)) of section 57" for "items of tax preference (as defined in section 57)", and in provisions following par. (2) "such personal service income" for "such earned income" and inserted in par. (1)(A) provision that for purposes this subparagraph, section 911(b) be applied without regard to the phrase ", not in excess of 30 percent of his share of net profits of such trade or business,".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(x)(3) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall apply to taxable years beginning after December 31, 1976."

Section 442(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (b)(1)(A) of this section] shall apply with respect to taxable years beginning after December 31, 1978."

Section 441(b)(1) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (b)(2)(B) of this section] shall apply with respect to taxable years beginning after October 31, 1978."

TRANSITIONAL RULE IN CASE OF TAXABLE YEAR BEGINNING BEFORE NOV. 1, 1978, AND ENDING AFTER OCTOBER 31, 1978

Section 441(b)(2) of Pub. L. 95-600, provided that: "In the case of a taxable year which begins before November 1, 1978, and ends after October 31, 1978, the amendment made by subsection (a) [amending subsec. (b)(2)(B) of this section] shall apply with respect to so much of the net capital gain of the taxpayer for the taxable year as is attributable to sales or exchanges after October 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 1304 of this title.

PART VII—RECOVERIES OF FOREIGN EXPROPRIATION LOSSES

§ 1351. Treatment of recoveries of foreign expropriation losses

[See main edition for text of (a) to (c)]

(d) Adjustment for prior tax benefits

[See main edition for text of (1) to (3)]

(4) Substitution of current tax rate

For purposes of this subsection, the rates of tax specified in section 11(b) for the taxable year of the recovery shall be treated as having been in effect for all prior taxable years.

[See main edition for text of (e) to (i)]

(As amended Pub. L. 95-600, title III, § 301(b)(17), Nov. 6, 1978, 92 Stat. 2823.)

AMENDMENTS

1978—Subsec. (d)(4). Pub. L. 95-600 substituted "the rates of tax specified in section 11(b)" for "the normal tax rate provided by section 11(b) and the surtax rate provided by section 11(c) which are in effect".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (d)(4) of this section by section 301(b)(17) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 53, 80, 901, 936, 6167 of this title.

Subchapter S—Election of Certain Small Business Corporations as to Taxable Status

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 46, 48, 50A, 50B, 53, 1212, 6037, 6103 of this title.

§ 1371. Definitions

(a) Small business corporation

For purposes of this subchapter, the term "small business corporation" means a domestic corporation which is not a member of an affiliated group (as defined in section 1504) and which does not—

(1) have more than 15 shareholders;

(2) have as a shareholder a person (other than an estate and other than a trust described in subsection (e)) who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

[See main edition for text of (b)]

(c) Stock owned by husband and wife

For purposes of subsection (a)(1), a husband and wife (and their estates) shall be treated as one shareholder.

[See main edition for text of (d)]

(e) Certain trusts permitted as shareholders

For purposes of subsection (a), the following trusts may be shareholders:

(1)(A) A trust all of which is treated as owned by the grantor (who is an individual who is a citizen or resident of the United States) under subpart E of part I of subchapter J of this chapter.

(B) A trust which was described in subparagraph (A) immediately before the death of the grantor and which continues in existence after such death, but only for the 60-day period beginning on the day of the grantor's death. If a trust is described in the preceding sentence and if the entire corpus of the trust is includible in the gross estate of the grantor, the preceding sentence shall be applied by substituting "2-year period" for "60-day period".

(2) A trust created primarily to exercise the voting power of stock transferred to it.

(3) Any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it.

In the case of a trust described in paragraph (1), the grantor shall be treated as the shareholder. In the case of a trust described in paragraph (2), each beneficiary of the trust shall, for purposes of subsection (a)(1), be treated as a shareholder.

[(f) Redesignated (e)]

(As amended Pub. L. 95-600, title III, §§ 341, 342, title VII, § 701(y)(1), Nov. 6, 1978, 92 Stat. 2843, 2921.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 341(a), substituted "more than 15" for "(except as provided in subsection (e)) more than 10".

Subsec. (a)(2). Pub. L. 95-600, § 341(b)(2), substituted "subsection (e)" for "subsection (f)".

Subsec. (c). Pub. L. 95-600, § 342(a), substituted provisions treating a husband and wife (and their estates) as one shareholder in all situations for provisions

treating a husband and wife owning stock jointly as one shareholder.

Subsec. (e). Pub. L. 95-600, §§ 341(b)(1), 342(b), 701(y)(1), redesignated former subsec. (f) as (e) and, as so redesignated, in par. (1) redesignated existing provisions as par. (1)(A) and added provisions respecting a citizen or resident of the United States, added par. (1)(B), and added in material following par. (3) provision that in the case of a trust described in paragraph (1), the grantor be treated as the shareholder. Former subsec. (e), relating to special shareholder rules, was struck out.

Subsec. (f). Pub. L. 95-600, § 341(b)(1), redesignated subsec. (f) as (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 344 of Pub. L. 95-600 provided that: "The amendments made by this part [amending subsecs. (a)(1), (2), (c), (e), (f) and section 1372(a), (c), (e)(1)(A), (C)] shall apply to taxable years beginning after December 31, 1978."

Section 701(y)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending subsec. (e)(1) of this section] shall apply to taxable years beginning after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 50B, 52, 57, 58, 163, 170, 183, 189, 280, 465, 992, 1016, 1101, 1251, 1372, 6037, 6362 of this title; title 46 section 1177.

§ 1372. Election by small business corporation

(a) Eligibility

Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election.

[See main edition for text of (b)]

(c) When and how made

(1) In general

An election under subsection (a) may be made by a small business corporation for any taxable year—

(A) at any time during the preceding taxable year, or

(B) at any time during the first 75 days of the taxable year.

(2) Treatment of certain late elections

If—

(A) a small business corporation makes an election under subsection (a) for any taxable year, and

(B) such election is made after the first 75 days of the taxable year and on or before the last day of such taxable year,

then such election shall be treated as having been made for the following taxable year.

(3) Manner of making election

An election under subsection (a) shall be made in such manner as the Secretary shall prescribe by regulations.

[See main edition for text of (d)]

(e) Termination

(1) New shareholders

(A) an[1] election under subsection (a) made by a small business corporation shall terminate if any person who is not a shareholder in such corporation on the day on which the election was made becomes a shareholder in such corporation and affirmatively refuses (in such manner as the Secretary may by regulations prescribe) to consent to such election on or before the 60th day after the day on which he acquired the stock.

[See main edition for text of (B)]

(C) Any termination of an election under subparagraph (A) by reason of the affirmative refusal of any person to consent to such election shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation (or, if later, the first taxable year for which such election would have taken effect) and for all succeeding taxable years of the corporation.

[See main edition for text of (2) to (5); (f)]

(As amended Pub. L. 95-600, title III, § 343, Nov. 6, 1978, 92 Stat. 2843; Pub. L. 95-628, § 5(a), (b), Nov. 10, 1978, 92 Stat. 3628.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-628, § 5(b)(2), made identical amendment to subsec. (a) as section 343(b)(1) of Pub. L. 95-600, requiring no change in text.

Pub. L. 95-600, § 343(b)(1), substituted provisions requiring that such election be valid only if all persons who are shareholders in such corporation on the day on which such election is made consent to such election for provisions requiring that such election be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or on the day on which the election is made, if the election is made after such first day, consent to such election.

Subsec. (c). Pub. L. 95-628, § 5(a), substituted "shall be treated as having been made" for "shall be treated as made".

Pub. L. 95-600, § 343(a), substituted provision permitting an election under subsection (a) to be made by a small business corporation for any taxable year at any time during the preceding taxable year, or at any time during the first 75 days of the taxable year for provision permitting an election under subsection (a) to be made by a small business corporation for any taxable year at any time during the first month of such taxable year of such taxable year, or at any time during the month preceding such month and added provisions relating to treatment of certain late elections.

Subsec. (e)(1)(A). Pub. L. 95-628, § 5(b)(1), substituted "who is not" for "who was not", "election was made" for "election is made", "which he acquired" for "which he acquires".

Pub. L. 95-600, § 343(b)(2), substituted reference to any person who was not a shareholder in such corporation on the day in which the election is made becomes a shareholder in such corporation for reference to any person who was not a shareholder in such corporation on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or on

[1] So in original. Probably should be "An".

the day on which the election is made, if such election is made after such first day, becomes a shareholder in such corporation.

Subsec. (e)(1)(C). Pub. L. 95–628, § 5(b)(3), substituted "have taken effect" for "otherwise have been effective".

Pub. L. 95–600, § 343(b)(3), inserted "(or, if later, the first taxable year for which such election would otherwise have been effective)" following "in the corporation".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 5(c) of Pub. L. 95–628 provided that: "The amendments made by subsections (a) and (b) [to subsecs. (a), (c) and (e)(1)(A) and (C) of this section] shall apply to elections made more than 60 days after the date of the enactment of this Act [Nov. 10, 1978] for taxable years beginning more than 60 days after such date of enactment [Nov. 10, 1978]."

Amendment of subsecs. (a), (c), (e)(1)(A), (C) by section 343 of Pub. L. 95–600 applicable to taxable years beginning after Dec. 31, 1978, see section 344 of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 1371 of this title.

RETROACTIVE APPLICATION OF "PRECEDING TAXABLE YEAR" AMENDMENT

Section 5(d) of Pub. L. 95–628 provided that:

"(1) IN GENERAL.—If—

"(A) a small business corporation has treated itself in its return as an electing small business corporation under subchapter S of chapter 1 of the Internal Revenue Code of 1954 [this subchapter] for any taxable year beginning before the date 60 days after the date of the enactment of this Act [Nov. 10, 1978] (hereinafter in this subsection referred to as the 'election year'),

"(B) such treatment was pursuant to an election which such corporation made during the taxable year immediately preceding the election year and which, but for this subsection, would not be effective, and

"(C) at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe by regulations—

"(i) such corporation makes an election under this paragraph, and

"(ii) all persons (or their personal representatives) who were shareholders of such corporation at any time beginning with the first day of the election year and ending on the date of the making of such election consent to such election, consent to the application of the amendment made by subsection (a) [to subsec. (c) of this section], and consent to the application of paragraph (3) of this subsection,

then paragraph (1) of the first sentence of section 1372(c) of such Code (as amended by subsection (a)) [subsec. (c)(1) of this section] shall apply with respect to the taxable years referred to in paragraph (2) of this subsection.

"(2) YEARS TO WHICH AMENDMENT APPLIES.—In the case of an election under paragraph (1) by any corporation, the taxable years referred to in this paragraph are—

"(A) the election year,

"(B) all subsequent taxable years of such corporation, and

"(C) in the case of each person who was a shareholder of such corporation at any time during any taxable year described in subparagraph (A) or (B)—

"(i) the first taxable year of such person ending with or within a taxable year described in subparagraph (A) or (B), and

"(ii) all subsequent taxable years of such person.

"(3) STATUTE OF LIMITATIONS FOR ASSESSMENT OF DEFICIENCY.—If the assessment of any deficiency in income tax resulting from the filing of an election under paragraph (1) for a taxable year ending before the date of such filing would be prevented, but for the application of this paragraph, before the expiration of one year after the date of such filing by any law or rule of law, then such deficiency (to the extent attributable to such election) may be assessed at any time before the expiration of such one-year period notwithstanding any law or rule of law which would otherwise prevent such assessment."

§ 1375. Special rules applicable to distributions of electing small business corporations

(a) Capital gains

[See main edition for text of (1)]

(2) Determination of shareholder's pro rata share

A shareholder's pro rata share of such gain for any taxable year shall be an amount which bears the same ratio to such gain as the amount of dividends described in paragraph (1) includible in the shareholder's gross income bears to the entire amount of dividends described in paragraph (1) includible in the gross income of all shareholders.

[See main edition for text of (3); (b) to (f)]

(As amended Pub. L. 95–600, title VII, § 703(j)(6), Nov. 6, 1978, 92 Stat. 2941.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95–600 substituted "such gain" for "such excess" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(2) by section 703(j)(6) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

§ 1378. Tax imposed on certain capital gains

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 50A, 53, 58, 1372, 1373, 1375 of this title.

Subchapter T—Cooperatives and Their Patrons

PART I—TAX TREATMENT OF COOPERATIVES

§ 1381. Organizations to which part applies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 50B, 52, 1382, 1385, 6044, 6072 of this title.

§ 1382. Taxable income of cooperatives

[See main edition for text of (a) to (f)]

(g) Use of completed crop pool method of accounting

(1) In general

An organization described in section 1381(a) which is engaged in pooling arrangements for the marketing of products may compute its taxable income with respect to any pool opened prior to March 1, 1978, under the completed crop pool method of accounting if—

(A) the organization has computed its taxable income under such method for the 10 taxable years ending with its first taxable year beginning after December 31, 1976, and

(B) with respect to the pool, the organization has entered into an agreement with the United States or any of its agencies which includes provisions to the effect that—

(i) the United States or such agency shall provide a loan to the organization with the products comprising the pool serving as collateral for such loan,

(ii) the organization shall use an amount equal to the proceeds of such loan to make price support advances to eligible producers (as determined by the United States or such agency), to defray costs of handling, processing, and storing such products, or to pay all or part of any administrative costs associated with the price support program,

(iii) an amount equal to the net proceeds (as determined under such agreement) from the sale or exchange of the products in the pool shall be used to repay such loan until such loan is repaid in full (or all the products in the pool are disposed of), and

(iv) the net gains (as determined under such agreement) from the sale or exchange of such products shall be distributed to eligible producers, except to the extent that the United States or such agency permits otherwise.

(2) Completed crop pool of accounting defined

For purposes of this subsection, the term "completed crop pool method of accounting" means a method of accounting under which gain or loss is computed separately for each crop year pool in the year in which the last of the products in the pool are disposed of.

(As amended Pub. L. 95-345, § 3, Aug. 15, 1978, 92 Stat. 483.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-345 added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1383, 1385, 1388, 6044 of this title.

PART III—DEFINITIONS; SPECIAL RULES

§ 1388. Definitions; special rules

[*See main edition for text of (a) to (i)*]

(j) Cross reference

For provisions relating to the apportionment of the investment credit between cooperative organizations and their patrons, see section 46(h).

(As amended Pub. L. 95-600, title III, § 316(b)(3), Nov. 6, 1978, 92 Stat. 2830.)

AMENDMENTS

1978—Subsec. (j). Pub. L. 95-600 added subsec. (j).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (j) by section 316(b)(3) of Pub. L. 95-600 applicable to taxable years ending after October 31, 1978, see section 316(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Subchapter U—General Stock Ownership Corporations

Sec.
1391. Definitions.
1392. Election by general stock ownership corporation.[1]
1393. Corporation taxable income taxed to shareholders.[1]
1394. Rules applicable to distributions of electing general stock ownership corporations.[1]
1395. Adjustments to basis of stock of shareholders.[1]
1396. Minimum distribution.[1]
1397. Special rules applicable to earnings and profits of an electing general stock ownership plan.[1]

AMENDMENTS

1978—Pub. L. 95-600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2892, added subchapter U.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6039B of this title.

§ 1391. Definitions

(a) General stock ownership corporation

For purposes of this subchapter, the term "general stock ownership corporation" (hereinafter referred to as a "GSOC") means a domestic corporation which—

(1) is not a member of an affiliated group (as defined in section 1504), and

(2) is chartered and organized after December 31, 1978, and before January 1, 1984;

(3) is chartered by an act of a State legislature or as a result of a State-wide referendum;

(4) has a charter providing—

(A) for the issuance of only 1 class of stocks,

(B) for the issuance of shares only to eligible individuals (as defined in subsection (c));

(C) for the issuance of at least one share to each eligible individual, unless such eligible individual elects within one year after the date of issuance not to receive such share;

(D) that no share of stock shall be transferable—

(i) by a shareholder other than by will or the laws of descent and distribution until after the expiration of 5 years from the date such stock is issued by the GSOC except where the shareholder ceases to be a resident of the State;

(ii) to any person other than a resident individual of the chartering State;

(iii) to any individual who, after the transfer, would own more than 10 shares of the GSOC;

(E) that such corporation shall qualify as a GSOC under the Internal Revenue Code;

(5) is empowered to invest in properties (but not in properties acquired by it or for its benefit through the right of eminent domain).

For purposes of this subsection, section 1504(a) shall be applied by substituting "20 percent" for "80 percent" wherever it appears.

[1] So in original. Does not conform to section catchline.

(b) Electing GSOC

For purposes of this subchapter, the term "electing GSOC" means a GSOC which files an election under section 1392 which, under section 1392, is in effect for such taxable year.

(c) Eligible individuals

For purposes of subsection (a), the term "eligible individual" means an individual who is, as of a date specified in the State's enabling legislation for the GSOC, a resident of the chartering State and who remains a resident of such State between that date and the date of issuance.

(d) Treated as private corporation

For purposes of this title, a GSOC shall be treated as a private corporation and not as a governmental unit.

(e) Study of general stock ownership corporations

The staff of the Joint Committee on Taxation shall prepare a report on the operation and effects of this subchapter relating to GSOC's. An interim report shall be filed within two years after the first GSOC is formed and a final report shall be filed by September 30, 1983.

(Added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2892.)

REFERENCES IN TEXT

The Internal Revenue Code, referred to in subsec. (a)(4)(E), is classified generally to this title.

EFFECTIVE DATE

Section 601(d) of Pub. L. 95–600 provided that: "The amendments made by this section [enacting this subchapter and section 6039B of this title, and amending sections 172, 1016, and 3402 of this title] shall apply with respect to corporations chartered after December 31, 1978, and before January 1, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 6039B of this title.

§ 1392. Election by GSOC

(a) Eligibility

Except as provided in section 1393, any GSOC may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter.

(b) Effect

If a GSOC makes an election under subsection (a) then—

(1) with respect to the taxable years of the GSOC for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of section 1396 shall apply to such GSOC, and

(2) with respect to each such taxable year, the provisions of sections 1393, 1394, and 1395 shall apply to the shareholders of such GSOC.

(c) Where and how made

An election under subsection (a) may be made by a GSOC at such time and in such manner as the Secretary shall prescribe by regulations.

(d) Years for which effective

An election under subsection (a) shall be effective for the taxable year of the GSOC for which it is made and for all succeeding taxable years of the GSOC, unless it is terminated under subsection (f).

(e) Taxable year

The taxable year of a GSOC shall end on October 31 unless the Secretary consents to a different taxable year.

(f) Termination

The election of a GSOC under subsection (a) shall terminate for any taxable year during which it ceases to be a GSOC and for all succeeding taxable years. The election of a GSOC under subsection (a) may be terminated at any other time with the consent of the Secretary, effective for the first taxable year with respect to which the Secretary consents and for all succeeding taxable years.

(Added Pub. L. 95–600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2893.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 1391, 6039B of this title.

§ 1393. GSOC taxable income taxed to shareholders

(a) General rule

The taxable income of an electing GSOC for any taxable year shall be included in the gross income of the shareholders of such GSOC in the manner and to the extent set forth in this subsection.

(1) Amount included in gross income

Each shareholder of an electing GSOC on any day of a taxable year of such GSOC shall include in his gross income for the taxable year with or within which the taxable year of the GSOC ends the amount he would have received if, on each day of such taxable year, there had been distributed pro rata to its shareholders by such GSOC an amount equal to the taxable income of the GSOC for its taxable year divided by the number of days in the GSOC's taxable year.

(2) Taxable income defined

For purposes of this section, the term "taxable income" of a GSOC shall be determined without regard to the deductions allowed by part VIII of subchapter B (other than deductions allowed by section 248, relating to organizational expenditures).

(b) Special rule for investment credit

The investment credit of an electing GSOC for any taxable year shall be allowed as a credit to the shareholders of such corporation in the manner and to the extent set forth in this subsection.

(1) Credit

There shall be apportioned among the shareholders a credit equal to the amount each shareholder would have received if, on each day of such taxable year, there had been distributed pro rata to the shareholders the electing GSOC's net investment credit divided by the number of days in the GSOC's taxable year.

(2) Net investment credit

For purposes of this paragraph the term "net investment credit" means the investment credit of the electing GSOC for its taxable year less any tax from recomputing a prior year's investment credit in accordance with section 47.

(3) Recapture

There shall be apportioned among the shareholders of a GSOC, in the manner described in paragraph (1), an additional tax equal to the excess of any tax resulting from recomputing a prior year's investment credit in accordance with section 47 over the investment credit of the GSOC for its taxable year.

(Added Pub. L. 95-600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2894.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1392, 1395, 1397 of this title.

§ 1394. Rules applicable to distributions of an electing GSOCs[1]

(a) Shareholder income account

An electing GSOC shall establish and maintain a shareholder income account which account shall be—

(1) increased at the close of the GSOC's taxable year by an amount equal to the GSOC's taxable income for such year, and

(2) decreased, but not below zero, on the first day of the GSOC's taxable year by the amount of any GSOC distribution to the shareholders of such GSOC made or treated as made during the prior taxable year.

(b) Taxation of distributions

Distributions by an electing GSOC shall be treated as—

(1) a distribution of previously taxed income to the extent such distribution does not exceed the balance of the shareholder income account as of the close of the taxable year of the GSOC, and

(2) a distribution to which section 301(a) applies but only to the extent such distribution exceeds the balance of the shareholder income account as of the close of the taxable year of the GSOC.

(c) Distributions not treated as a dividend

Any amounts includible in the gross income of any individual by reason of ownership of stock in a GSOC shall not be considered as a dividend for purposes of section 116.

(d) Regulations

The Secretary shall have authority to prescribe by regulation, rules for treatment of distributions in respect of shares of stock of the GSOC that have been transferred during the taxable year.

(Added Pub. L. 95-600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1392 of this title.

§ 1395. Adjustment to basis of stock of shareholders

The basis of a shareholder's stock in an electing GSOC shall be increased by the amount includible in the gross income of such shareholder under section 1393, but only to the extent to which such amount is actually included in the gross income of such shareholder.

(Added Pub. L. 95-600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 1392 of this title.

§ 1396. Minimum distributions

(a) General rule

A GSOC shall distribute at least 90 percent of its taxable income for any taxable year by January 31 following the close of such taxable year. Any distribution made on or before January 31 shall be treated as made as of the close of the preceding taxable year.

(b) Imposition of tax in case of failure to make minimum distributions

If a GSOC fails to make the minimum distribution requirements described in subsection (a), there is hereby imposed a tax equal to 20 percent of the excess of the amount required to be distributed over the amount actually distributed.

(Added Pub. L. 95-600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1392 of this title.

§ 1397. Special rules applicable to an electing GSOC

(a) General rule

The current earnings and profits of an electing GSOC as of the close of its taxable year shall not include the amount of taxable income for such year which is required to be included in the gross income of the shareholders of such GSOC under section 1393(a).

(b) Special rule for audit adjustments

(1) Taxable income

Taxable income of an electing GSOC shall, in the year of final determination, be increased or decreased, as the case might be, by any adjustment to taxable income for a prior taxable year.

(2) Investment credit

The net investment credit of an electing GSOC shall, in the year of final determination, be increased or decreased, as the case might be, by any adjustment to the net investment credit for a prior taxable year.

(3) Method of making adjustments

An electing GSOC shall include in gross income for the year of an adjustment the amount described in paragraph (1) and shall take into account the adjustment described in paragraph (2), and shall be liable for payment of interest in the amount that would have been payable by the GSOC under section 6601 (relating to interest on underpayment,

[1] So in original. Probably should be "GSOC's".

nonpayment or extensions of time for payment, of tax) or receivable by the GSOC under section 6611 (relating to interest on overpayments) if such GSOC had been a corporation other than an electing GSOC.

(Added Pub. L. 95-600, title VI, § 601(a), Nov. 6, 1978, 92 Stat. 2895.)

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

Chapter Referred to in Other Sections

This chapter is referred to in sections 401, 408, 1016, 6015, 6017, 6103, 6414, 6511, 6521, 6654, 7651, 7655, 7701 of this title; title 42 sections 401, 405, 408; title 48 sections 1421h, 1421i.

§ 1401. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning before January 1, 1978, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year;

(2) in the case of any taxable year beginning after December 31, 1977, and before January 1, 1979, the tax shall be equal to 7.10 percent of the amount of the self-employment income for such taxable year;

(3) in the case of any taxable year beginning after December 31, 1978, and before January 1, 1981, the tax shall be equal to 7.05 percent of the amount of the self-employment income for such taxable year;

(4) in the case of any taxable year beginning after December 31, 1980, and before January 1, 1982, the tax shall be equal to 8.00 percent of the amount of the self-employment income for such taxable year;

(5) in the case of any taxable year beginning after December 31, 1981, and before January 1, 1985, the tax shall be equal to 8.05 percent of the amount of the self-employment income for such taxable year;

(6) in the case of any taxable year beginning after December 31, 1984, and before January 1, 1990, the tax shall be equal to 8.55 percent of the amount of the self-employment income for such taxable year; and

(7) in the case of any taxable year beginning after December 31, 1989, the tax shall be equal to 9.30 percent of the amount of the self-employment income for such taxable year.

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1973, and before January 1, 1978, the tax shall be equal to 0.90 percent of the amount of the self-employment income for such taxable year;

(2) in the case of any taxable year beginning after December 31, 1977, and before January 1, 1979, the tax shall be equal to 1.00 percent of the amount of the self-employment income for such taxable year;

(3) in the case of any taxable year beginning after December 31, 1978, and before January 1, 1981, the tax shall be equal to 1.05 percent of the amount of the self-employment income for such taxable year;

(4) in the case of any taxable year beginning after December 31, 1980, and before January 1, 1985, the tax shall be equal to 1.30 percent of the amount of the self-employment income for such taxable year;

(5) in the case of any taxable year beginning after December 31, 1984, and before January 1, 1986, the tax shall be equal to 1.35 percent of the amount of the self-employment income for such taxable year; and

(6) in the case of any taxable year beginning after December 31, 1985, the tax shall be equal to 1.45 percent of the amount of the self-employment income for such taxable year.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

(As amended Dec. 20, 1977, Pub. L. 95-216, title I, § 101(a)(3), (b)(3), title III, § 317(b)(1), 91 Stat. 1511, 1512, 1539.)

References in Text

The Social Security Act, referred to in subsec. (c) is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Section 233 of such Act is classified to section 433 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Amendments

1977—Subsec. (a). Pub. L. 95-216, § 101(a)(3), substituted provisions calling for a graduated increase in the tax from 7.0 percent for taxable years beginning before Jan. 1, 1978, to 9.30 percent for taxable years beginning after Dec. 31, 1989, for provisions under which the tax had been set at 7.0 percent without any increase in the rate in future years.

Subsec. (b). Pub. L. 95-216, § 101(b)(3), substituted "after December 31, 1977, and before January 1, 1979" for "after December 31, 1977, and before January 1, 1981" and "1.00 percent" for "1.10 percent" in par. (2), substituted "after December 31, 1978, and before January 1, 1981" for "after December 31, 1980, and before January 1, 1986" and "1.05 percent" for "1.35 percent" in par. (3), substituted "after December 31, 1980, and before January 1, 1985" for "after December 31, 1985" and "1.30 percent" for "1.50 percent" in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95-216, § 317(b)(1), added subsec. (c).

Effective Date of 1977 Amendment

Section 104 of Pub. L. 95-216 provided that: "The amendments made by this title [amending sections 1401, 3101, and 3111 of this title and sections 401, 415,

and 430 of Title 42, The Public Health and Welfare] shall apply with respect to remuneration paid or received, and taxable years beginning, after 1977."

DEDUCTION BY OR CREDIT AGAINST INDIVIDUAL INCOME TAX FOR TAXES PAID INTO FOREIGN SOCIAL SECURITY SYSTEM PURSUANT TO INTERNATIONAL AGREEMENT

Section 317(b)(4) of Pub. L. 95-216 provided that: "Notwithstanding any other provision of law, taxes paid by any individual to any foreign country with respect to any period of employment or self-employment which is covered under the social security system of such foreign country in accordance with the terms of an agreement entered into pursuant to section 233 of the Social Security Act [section 433 of Title 42, The Public Health and Welfare] shall not, under the income tax laws of the United States, be deductible by, or creditable against the income tax of, any such individual."

§ 1402. Definitions

(a) Net earnings from self-employment

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

[*See main edition for text of (1) to (7)*]

(8) an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 relating to meals and lodging furnished for the convenience of the employer), section 911 (relating to income earned by employees in certain camps) and section 931 (relating to income from sources within possessions of the United States);

[*See main edition for text of (9)*]

(10) there shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

[*See main edition for text of (A) and (B)*]

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(11) in the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) shall not apply; and

(12) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than $2,400, his distributive share of income described in section 702(a)(9) derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600 his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (h), or by a partnership of which an individual is a member on a regular basis as defined in subsection (h), but only if such individual's net earnings from self-employment as determined without regard to this sentence in the taxable year are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

[*See main edition for text of* (b)]

(c) Trade or business

The term "trade or business," when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

[*See main edition for text of* (1) *to* (5)]

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

[*See main edition for text of* (d) *to* (h)]

(As amended Dec. 20, 1977, Pub. L. 95–216, title III, § 313(b), 91 Stat. 1536; Nov. 6, 1978, Pub. L. 95–600, title VII, § 703(j)(8), 92 Stat. 2941; Nov. 8, 1978, Pub. L. 95–615, § 202(f)(5), 92 Stat. 3100.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–615 substituted in par. (8), "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)".

Pub. L. 95–600, § 703(j)(8)(A), in last paragraph substituted "subsection (h)" for "subsection (i)" wherever appearing.

Subsec. (c)(6). Pub. L. 95–600, § 703(j)(8)(B), substituted "subsection (g)" for "subsection (h)".

1977—Subsec. (a)(12). Pub. L. 95–216 added subsec. (a)(12).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a), (c)(6) of this section by section 703(j)(8)(A), (B) of Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95–615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95–615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 313(c) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note under section 411 of Title 42, The Public Health and Welfare.

REVOCATION OF EXEMPTION FROM COVERAGE BY CLERGYMEN; PROCEDURE, APPLICABILITY, ETC.

Section 316 of Pub. L. 95–216 provided that:

"(a) Notwithstanding section 1402(e)(3) of the Internal Revenue Code of 1954, any exemption which has been received under section 1402(e)(1) of such Code, by a duly ordained, commissioned, or licensed minister of a church or a Christian Science practitioner, and which is effective for the taxable year in which this Act [Pub. L. 95–216, enacted Dec. 20, 1977] is enacted, may be revoked by filing an application therefor (in such form and manner, and with such official, as may be prescribed in regulations made under chapter 2 of such Code [this chapter]), if such application is filed—

"(1) before the applicant becomes entitled to benefits under section 202(a) or 223 of the Social Security Act [section 402(a) or 423 of Title 42, The Public Health and Welfare] (without regard to section 202(j)(1) or 223(b) of such Act [section 402(j)(1) or 423(b) of Title 42]), and

"(2) no later than the due date of the Federal income tax return (including any extension thereof) for the applicant's first taxable year beginning after the date of the enactment of this Act [Dec. 20, 1977].

Any such revocation shall be effective (for purposes of chapter 2 of the Internal Revenue Code of 1954 [this chapter] and title II of the Social Security Act [section 401 et seq. of Title 42]), as specified in the application, either with respect to the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] or with respect to the applicant's first taxable year beginning after such date, and for all succeeding taxable years; and the applicant for any such revocation may not thereafter again file application for an exemption under such section 1402(e)(1). If the application is filed on or after the due date of the applicant's first taxable year ending on or after the date of the enactment of this Act [Dec. 20, 1977] and is effective with respect to that taxable year, it shall include or be accompanied by payment in full of an amount equal to the total of the taxes that would have been imposed by section 1401 of the Internal Revenue Code of 1954 with respect to all of the applicant's income derived in that taxable year which would have constituted net earnings from self-employment for purposes of chapter 2 of such Code [this chapter] (notwithstanding section 1402(c)(4) or (c)(5) of such Code) except for the exemption under section 1402(e)(1) of such Code.

"(b) Subsection (a) shall apply with respect to service performed (to the extent specified in such subsection) in taxable years ending on or after the date of the enactment of this Act [Dec. 20, 1977], and with respect to monthly insurance benefits payable under title II of the Social Security Act [section 401 et seq. of Title 42] on the basis of the wages and self-employment income of any individual for months in or after the calendar year in which such individual's application for revocation (as described in such subsection) is filed (and lump-sum death payments payable under such title on the basis of such wages and self-employment income in the case of deaths occurring in or after such calendar year)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43, 401, 408, 981, 2032A, 2040, 6362, 6521, 6654 of this title; title 42 sections 401, 402, 411, 430.

CHAPTER 5—TAX ON TRANSFERS TO AVOID INCOME TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 991, 6013 of this title.

§ 1491. Imposition of tax

There is hereby imposed on the transfer of property by a citizen or resident of the United States, or by a domestic corporation or partnership, or by an estate or trust which is not a foreign estate or trust, to a foreign corporation as paid-in surplus or as a contribution to capital, or to a foreign estate or trust, or to a foreign partnership, an excise tax equal to 35 percent of the excess of—

[*See main edition for text of (1) and (2)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(14)(A), 92 Stat. 2919.)

AMENDMENTS

1978—Pub. L. 95-600 substituted "estate or trust" for "trust" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(u)(14)(C) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [amending this section and section 1492(3) of this title] shall apply to transfers after October 2, 1975."

§ 1492. Nontaxable transfers

The tax imposed by section 1491 shall not apply—

[*See main edition for text of (1) and (2)*]

(3) To a transfer described in section 367; or

[*See main edition for text of (4)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(14)(B), 92 Stat. 2919.)

AMENDMENTS

1978—Par. (3). Pub. L. 95-600 substituted "To a transfer described in section 367; or" for "To a transfer to which section 367 applies; or".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of par. (3) by section 701(u)(14)(B) of Pub. L. 95-600 applicable to transfers after Oct. 2, 1975, see section 701(u)(14)(C) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1491 of this title.

CHAPTER 6—CONSOLIDATED RETURNS

Subchapter A—Returns and Payment of Tax

§ 1504. Definitions

(a) Definition of "affiliated group"

As used in this chapter, the term "affiliated group" means one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation if—

[*See main edition for text of (1) and (2)*]

As used in this subsection, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends, employer securities (within the meaning for section 409A(*l*)) while such securities are held under an ESOP, or qualifying employer securities (within the meaning of section 4975(e)(8)) while such securities are held under a leveraged employee stock ownership plan which meets the requirements of section 4975(e)(7).

(b) Definition of "includible corporation"

As used in this chapter, the term "includible corporation" means any corporation except—

[*See main edition for text of (1) to (4)*]

[(5) Repealed. Pub. L. 94-455, title X, § 1053(d)(2), Oct. 4, 1976, 90 Stat. 1649]

[*See main edition for text of (6) and (7); (c) to (e)*]

(As amended Oct. 4, 1976, Pub. L. 94-455, title X, § 1053(d)(2), 90 Stat. 1649; Nov. 6, 1978, Pub. L. 95-600, title I, § 141(f)(4), 92 Stat. 2795.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 substituted "(within the meaning for section 409A(*l*)) while such securities are held under an ESOP, or qualifying employer securities (within the meaning of section 4975(e)(8)) while such securities are held under a leveraged employee stock ownership plan which meets the requirements of section 4975(e)(7)" for "within the meaning of section 301(d)(9)(A) of the Tax Reduction Act of 1975, or qualifying employer securities

within the meaning of section 4975(e)(8) while such securities are held under an employee stock ownership plan which meets the requirements of section 301(d) of such Act or section 4975(e)(7), respectively".

1976—Subsec. (b)(5). Pub. L. 94-455, § 1053(d)(2), struck out subsec. (b)(5) which included corporations organized under the China Trade Act, 1922, within the term "includible corporation".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) of this section by section 141(f)(4) of Pub. L. 95-600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409A of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subsec. (b)(5) by Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 1053(e) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 116 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 279, 281, 312, 337, 374, 404, 542, 593, 904, 1313, 1371, 1391, 1503, 4216, 4282 of this title.

Subchapter B—Related Rules

PART I—IN GENERAL

Sec.
1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit.

AMENDMENTS

1978—Pub. L. 95-600, title III, § 301(b)(18)(C), Nov. 6, 1978, 92 Stat. 2823, in item 1551 substituted "the benefits of the graduated corporate rates" for "surtax exemption".

§ 1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit

(a) In general

If—

[See main edition for text of (1) to (3)]

and the transferee corporation was created for the purpose of acquiring such property or was not actively engaged in business at the time of such acquisition, and if after such transfer the transferor or transferors are in control of such transferee corporation during any part of the taxable year of such transferee corporation, then for such taxable year of such transferee corporation the Secretary may (except as may be otherwise determined under subsection (c)) disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section, or the $150,000 accumulated earnings credit provided in paragraph (2) or (3) of section 535(c), unless such transferee corporation shall establish by the clear preponderance of the evidence that the securing of such benefits or credit was not a major purpose of such transfer.

[See main edition for text of (b) and (c)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(18)(A), (B), 92 Stat. 2823.)

AMENDMENTS

1978—Pub. L. 95-600, § 301(b)(18)(B), in section heading substituted "the benefits of the graduated corporate rates" for "surtax exemption".

Subsec. (a). Pub. L. 95-600, § 301(b)(18)(A), in provisions following par. (3) substituted "disallow the benefits of the rates contained in section 11(b) which are lower than the highest rate specified in such section" for "disallow the surtax exemption (as defined in section 11(d))" and "such benefits or" for "such exemption or".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 301(b)(18)(A), (B) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

PART II—CERTAIN CONTROLLED CORPORATIONS

§ 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations

(a) General rule

The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to—

(1) amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation which is not a component member of a controlled group is entitled,

[See main edition for text of (2) and (3)]

The amounts specified in paragraph (1) shall be divided equally among the component members of such group on such December 31 unless all of such component members consent (at such time and in such manner as the Secretary shall by regulations prescribe) to an apportionment plan providing for an unequal allocation of such amounts. The amounts specified in paragraphs (2) and (3) shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amounts.

(b) Certain short taxable years

If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle—

(1) the amount in each taxable income bracket in the tax table in section 11(b),

(2) the amount to be used in computing the accumulated earnings credit under section 535(c)(2) and (3), and

(3) the amount to be used in computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10),

of such corporation for such taxable year shall be the amount specified in subsection (a)(1), (2), or (3), as the case may be, divided by the number of corporations which are component members of such group on the last day of such

taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.

(As amended Pub. L. 95-600, title III, § 301(b)(19), title VII, § 703(j)(7), Nov. 6, 1978, 92 Stat. 2823, 2941.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 301(b)(19)(A), in par. (1) substituted "amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation is not a component member of a controlled group is entitled" for "the surtax exemption under section 11(d)" and in provisions following par. (3) substituted "amounts" for "amount" in two places and struck out provision that in applying section 11(b)(2), the first $25,000 of taxable income and the second $25,000 of taxable income each be allocated among the component members of a controlled group of corporations in the same manner as the surtax exemption is allocated.

Subsec. (b)(1). Pub. L. 95-600, § 301(b)(19)(B), substituted "the amount in each taxable income bracket in the tax table in section 11(b)" for "the surtax exemption under section 11(d)".

Subsec. (b)(3). Pub. L. 95-600, § 703(j)(7), substituted "804(a)(3)" for "804(a)(4)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a)(1) and (b)(1) of this section by section 301(b)(19) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Amendment of subsec. (b)(3) of this section by section 703(j)(7) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 1564 of this title.

§ 1563. Definitions and special rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 50A, 50B, 52, 58, 103, 120, 127, 179, 250, 368, 382, 404, 409A, 414, 415, 465, 466, 613A, 861, 993, 1504, 1551, 1561, 1564, 4064; title 29 sections 1002, 1060, 1107, 1301, 1322.

Subtitle B—Estate and Gift Taxes

CHAPTER 11—ESTATE TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 667, 1014, 1016, 1023, 2613, 2614, 2621, 6103, 6161, 6163, 6212, 6314, 6324, 6324A, 6501, 6601, 7269, 7404, 7463, 7517 of this title.

Subchapter A—Estates of Citizens or Residents

PART I—TAX IMPOSED

§ 2001. Imposition and rate of tax

[*See main edition for text of* (a) *to* (d)]

(e) Coordination of sections 2513 and 2035

If—

(1) the decedent's spouse was the donor of any gift one-half of which was considered under section 2513 as made by the decedent, and

(2) the amount of such gift is includible in the gross estate of the decedent's spouse by reason of section 2035,

such gift shall not be included in the adjusted taxable gifts of the decedent for purposes of subsection (b)(1)(B), and the aggregate amount determined under subsection (b)(2) shall be reduced by the amount (if any) determined under subsection (d) which was treated as a tax payable by the decedent's spouse with respect to such gift.

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(h)(1), 92 Stat. 2930.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-600 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(h)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending this section and section 2602 of this title] shall apply with respect to the estates of decedents dying after December 31, 1976, except that such amendments shall not apply to transfers made before January 1, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 1023, 2010, 2012, 2013, 2014, 2015, 2032A, 2040, 2051, 2053, 2054, 2055, 2056, 2057, 2101, 2107, 2502, 2602, 2621, 6018, 6019, 6166, 6166A of this title.

PART II—CREDITS AGAINST TAX

§ 2011. Credit for State death taxes

[*See main edition for text of* (a) *to* (d)]

(e) Limitation in cases involving deduction under section 2053(d)

In any case where a deduction is allowed under section 2053(d) for an estate, succession, legacy, or inheritance tax imposed by a State or the District of Columbia upon a transfer for public, charitable, or religious uses described in section 2055 or 2106(a)(2), the allowance of the credit under this section shall be subject to the following conditions and limitations:

[*See main edition for text of* (1)]

(2) The credit shall not exceed the lesser of—

(A) the amount stated in subsection (b) on an adjusted taxable estate determined by allowing such deduction authorized by section 2053(d), or

(B) that proportion of the amount stated in subsection (b) on an adjusted taxable estate determined without regard to such deduction authorized by section 2053(d) as (i) the amount of the taxes described in subsection (a), as limited by the provisions of paragraph (1) of this subsection, bears to (ii) the amount of the taxes described in subsection (a) before applying the limitation contained in paragraph (1) of this subsection.

[*See main edition for text of* (3); (f)]

CODIFICATION

Subsection (e)(2) is set out in this supplement to correct error in executing the amendment made by Pub. L. 94-455, title XX, § 2001(e)(1)(A)(iii).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1902(c)(1) of Pub. L. 94-455 as amended by Pub. L. 95-600, title VII, § 703(j)(12), Nov. 6, 1973, 92 Stat. 2942, provided that: "The amendments made by paragraphs (1) through (8), and paragraphs (7)(A), (B), and (C), of subsection (a) and by subsection (b) [amending sections 2011, 2012, 2013, 2016, 2038, 2053, 2055, 2056, 2106, 2107, 2108, 2201, 6167, and 6503 of this title, repealing section 2202 of this title, and enacting provisions set out as a note under section 2201 of this title] shall apply in the case of estates of decedents dying after the date of the enactment of this Act [Oct. 4, 1976], and the amendment made by paragraph (9) of subsection (a) [amending section 2204 of this title] shall apply in the case of estates of decedents dying after December 31, 1970."

§ 2012. Credit for gift tax

CODIFICATION

The date in the section credit for Pub. L. 91-614 should read Dec. 31, 1970, not Dec. 18, 1970.

PART III—GROSS ESTATE

§ 2032A. Valuation of certain farm, etc., real property

[See main edition for text of (a)]

(b) Qualified real property

(1) In general

For purposes of this section, the term "qualified real property" means real property located in the United States which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use, but only if—

[See main edition for text of (A) to (D), (2) and (3)]

(c) Tax treatment of dispositions and failures to use for qualified use

[See main edition for text of (1) to (5)]

(6) Liability for tax; furnishing of bond

The qualified heir shall be personally liable for the additional tax imposed by this subsection with respect to his interest unless the heir has furnished bond which meets the requirements of subsection (e)(11).

[See main edition for text of (7); (d)]

(e) Definitions; special rules

For purposes of this section—

[See main edition for text of (1) to (8)]

(9) Property acquired from decedent

Property shall be considered to have been acquired from or to have passed from the decedent if—

(A) such property is so considered under section 1014(b) (relating to basis of property acquired from a decedent),

(B) such property is acquired by any person from the estate in satisfaction of the right of such person to a pecuniary bequest, or

(C) such property is acquired by any person from a trust in satisfaction of a right (which such person has by reason of the death of the decedent) to receive from the trust a specific dollar amount which is the equivalent of a pecuniary bequest.

(10) Community property

If the decedent and his surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in such property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to such property which is consistent with the result which would have obtained under this section if such property had not been community property.

(11) Bond in lieu of personal liability

If the qualified heir makes written application to the Secretary for determination of the maximum amount of the additional tax which may be imposed by subsection (c) with respect to the qualified heir's interest, the Secretary (as soon as possible, and in any event within 1 year after the making of such application) shall notify the heir of such maximum amount. The qualified heir, on furnishing a bond in such amount and for such period as may be required, shall be discharged from personal liability for any additional tax imposed by subsection (c) and shall be entitled to a receipt or writing showing such discharge.

(f) Statute of limitations

If qualified real property is disposed of or ceases to be used for a qualified use, then—

(1) the statutory period for the assessment of any additional tax under subsection (c) attributable to such disposition or cessation shall not expire before the expiration of 3 years from the date the Secretary is notified (in such manner as the Secretary may by regulations prescribe) of such disposition or cessation (or if later in the case of an involuntary conversion to which an election under subsection (h) applies, 3 years from the date the Secretary is notified of the replacement of the converted property or of an intention not to replace), and

[See main edition for text of (2); (g)]

(h) Special rules for involuntary conversions of qualified real property

(1) Treatment of converted property

(A) In general

If there is an involuntary conversion of an interest in qualified real property and the qualified heir makes an election under this subsection—

(i) no tax shall be imposed by subsection (c) on such conversion if the cost of the qualified replacement property equals or exceeds the amount realized on such conversion, or

(ii) if clause (i) does not apply, the amount of the tax imposed by subsection (c) on such conversion shall be the amount determined under subparagraph (B).

(B) Amount of tax where there is not complete reinvestment

The amount determined under this subparagraph with respect to any involuntary

conversion is the amount of the tax which (but for this subsection) would have been imposed on such conversion reduced by an amount which—

(i) bears the same ratio to such tax, as

(ii) the cost of the qualified replacement property bears to the amount realized on the conversion.

(2) Treatment of replacement property

For purposes of subsection (c)—

(A) any qualified replacement property shall be treated in the same manner as if it were a portion of the interest in qualified real property which was involuntarily converted, except that with respect to such qualified replacement property—

(i) the 15-year period under paragraph (1) of subsection (c) shall be extended by any period, beyond the 2-year period referred to in section 1033(a)(2)(B)(i), during which the qualified heir was allowed to replace the qualified real property, and

(ii) the phaseout period under paragraph (3) of subsection (c) shall be appropriately adjusted to take into account the extension referred to in clause (i),

(B) any tax imposed by subsection (c) on the involuntary conversion shall be treated as a tax imposed on a partial disposition, and

(C) paragraph (7) of subsection (c) shall be applied—

(i) by not taking into account periods after the involuntary conversion and before the acquisition of the qualified replacement property, and

(ii) by treating material participation with respect to the converted property as material participation with respect to the qualified replacement property.

(3) Definitions and special rules

For purposes of this subsection—

(A) Involuntary conversion

The term "involuntary conversion" means a compulsory or involuntary conversion within the meaning of section 1033.

(B) Qualified replacement property

The term "qualified replacement property" means—

(i) in the case of an involuntary conversion described in section 1033(a)(1), any real property into which the qualified real property is converted, or

(ii) in the case of an involuntary conversion described in section 1033(a)(2), any real property purchased by the qualified heir during the period specified in section 1033(a)(2)(B) for purposes of replacing the qualified real property.

Such term only includes property which is to be used for the qualified use set forth in subparagraph (A) or (B) of subsection (b)(2) under which the qualified real property qualified under subsection (a).

(4) Certain rules made applicable

The rules of the last sentence of section 1033(a)(2)(A) shall apply for purposes of paragraph (3)(B)(ii).

(5) Election

Any election under this subsection shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(As amended Pub. L. 95-472, § 4(a), (c), Oct. 17, 1978, 92 Stat. 1334, 1336; Pub. L. 95-600, title VII, § 702(d) (1), (2), (4), (5), Nov. 6, 1978, 92 Stat. 2928, 2929.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 702(d)(1), added "which was acquired from or passed from the decedent to a qualified heir of the decedent and" following "located in the United States".

Subsec. (c)(6). Pub. L. 95-600, § 702(d)(5)(A), added "unless the heir has furnished bond which meets the requirements of subsection (e)(11)" following "respect to his interest".

Subsec. (e)(9). Pub. L. 95-600, § 702(d)(2), added subsec. (e)(9).

Subsec. (e)(10). Pub. L. 95-600, § 702(d)(4), added subsec. (e)(10).

Subsec. (e)(11). Pub. L. 95-600, § 702(d)(5)(B), added subsec. (e)(11).

Subsec. (f)(1). Pub. L. 95-472, § 4(c), added provision relating to the expiration of the statutory period for the assessment of additional tax due under subsec. (c) in the case of an involuntary conversion to which an election under subsec. (h) is applicable.

Subsec. (h). Pub. L. 95-472, § 4(a), added subsec. (h).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(d)(6) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending this section and section 1040 of this title] shall apply to the estates of decedents dying after December 31, 1976."

Amendment of section by Pub. L. 95-472 applicable with respect to involuntary conversions after Dec. 31, 1976, see section 4(d) of Pub. L. 95-472 set out as an Effective Date of 1978 Amendment note under section 1016 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 1040, 2013, 2040, 6324B of this title.

§ 2035. Adjustments for gifts made within 3 years of decedent's death

[*See main edition for text of* (a)]

(b) Exceptions

Subsection (a) shall not apply—

(1) to any bona fide sale for an adequate and full consideration in money or money's worth, and

(2) to any gift to a donee made during a calendar year if the decedent was not required by section 6019 to file any gift tax return for such year with respect to gifts to such donee.

Paragraph (2) shall not apply to any transfer with respect to a life insurance policy.

[*See main edition for text of* (c)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(f)(1), 92 Stat. 2930.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600 substituted in par. (2) provisions relating to gifts for which donee was not required by section 6019 to file gift tax returns for provisions relating to gifts excludable in computing taxable gifts by reason of section 2503(b) and added provisions following par. (2) relating to the inapplica-

bility of par. (2) to transfers respecting life insurance policies.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(f)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976, except that it shall not apply to transfers made before January 1, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1023, 2001, 2036, 2041, 2043, 2044, 2056, 2104, 2107, 2602, 6324 of this title.

§ 2036. Transfers with retained life estate

(a) General rule

The value of the gross estate shall include the value of all property to the extent of any interest therein of which the decedent has at any time made a transfer (except in case of a bona fide sale for an adequate and full consideration in money or money's worth), by trust or otherwise, under which he has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death—

(1) the possession or enjoyment of, or the right to the income from, the property, or

(2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom.

(b) Voting rights

(1) In general

For purposes of subsection (a)(1), the retention of the right to vote (directly or indirectly) shares of stock of a controlled corporation shall be considered to be a retention of the enjoyment of transferred property.

(2) Controlled corporation

For purposes of paragraph (1), a corporation shall be treated as a controlled corporation if, at any time after the transfer of the property and during the 3-year period ending on the date of the decedent's death, the decedent owned (with the application of section 318), or had the right (either alone or in conjunction with any person) to vote, stock possessing at least 20 percent of the total combined voting power of all classes of stock.

(3) Coordination with section 2035

For purposes of applying section 2035 with respect to paragraph (1), the relinquishment or cessation of voting rights shall be treated as a transfer of property made by the decedent.

(c) Limitation on application of general rule

This section shall not apply to a transfer made before March 4, 1931; nor to a transfer made after March 3, 1931, and before June 7, 1932, unless the property transferred would have been includible in the decedent's gross estate by reason of the amendatory language of the joint resolution of March 3, 1931 (46 Stat. 1516).

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(i)(1), (2), 92 Stat. 2931.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 702(i)(2), struck out provision following par. (2) relating to the retention of voting rights in retained stock.

Subsec. (b). Pub. L. 95-600, § 702(i)(1), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95-600, § 702(i)(1), redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(i)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending this section] shall apply to transfers made after June 22, 1976."

§ 2039. Annuities

[See main edition for text of (a) and (b)]

(c) Exemption of annuities under certain trusts and plans

Notwithstanding the provisions of this section or of any provision of law, there shall be excluded from the gross estate the value of an annuity or other payment (other than an amount described in subsection (f)) receivable by any beneficiary (other than the executor) under—

[See main edition for text of (1) to (4) and closing par.; (d)]

(e) Exclusion of individual retirement accounts, etc.

Notwithstanding the provisions of this section or of any other provision of law, there shall be excluded from the value of the gross estate the value of an annuity receivable by any beneficiary (other than the executor) under—

(1) an individual retirement account described in section 408(a),

(2) an individual retirement annuity described in section 408(b), or

(3) a retirement bond described in section 409(a).

If any payment to an account described in paragraph (1) or for an annuity described in paragraph (2) or a bond described in paragraph (3) was not allowable as a deduction under section 219 or 220 and was not a rollover contribution described in section 402(a)(5), 403(a)(4), section 403(b)(8) (but only to the extent such contribution is attributable to a distribution from a contract described in subsection (c)(3)), 408(d)(3), or 409(b)(3)(C), the preceding sentence shall not apply to that portion of the value of the amount receivable under such account, annuity, or bond (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account, annuity, or bond and which was not allowable as a deduction under section 219 or 220 and was not such a rollover contribution bears to the total amount paid to or for such account, annuity, or bond. For purposes of this subsection, the term "annuity" means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the executor) for his life or over a period extending for at least 36 months after the date of the decedent's death.

(f) Lump sum distributions

(1) In general

An amount is described in this subsection if it is a lump sum distribution described in section 402(e)(4) (determined without regard to the next to the last sentence of section 402(e)(4)(A)).

(2) Exception where recipient elects not to take 10-year averaging

A lump sum distribution described in paragraph (1) shall be treated as not described in this subsection if the recipient elects irrevocably (at such time and in such manner as the Secretary may by regulations prescribe) to treat the distribution as taxable under section 402(a) without the application of paragraph (2) thereof.

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, §§ 142(a), (b), 156(c)(4), title VII, § 702(j)(1), 92 Stat. 2796, 2803, 2931.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600, § 142(a), substituted "(other than an amount described in subsection (f))" for "(other than a lump sum distribution described in section 402(e)(4), determined without regard to the next to the last sentence of section 402(e)(4)(A))" in the provisions preceding par. (1).

Subsec. (e). Pub. L. 95-600, §§ 156(c)(4), 702(j)(1), inserted "section 403(b)(8) (but only to the extent such contribution is attributed to a distribution from a contract described in subsection (c)(3))," following "403(a)(4)" and added "or 220" following "section 219" wherever appearing in provisions following par. (3).

Subsec. (f). Pub. L. 95-600, § 142(b), added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 142(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1978."

Amendment of subsec. (e) of this section by section 156(c)(4) of Pub. L. 95-600 applicable to distributions or transfers made after Dec. 31, 1978, in taxable years beginning after such date, see section 156(d) of Pub. L. 95-600 set out as an Effective Date of 1978 Amendment note under section 403 of this title.

Section 702(j)(3)(A) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to the estates of decedents dying after December 31, 1976."

§ 2040. Joint interests

[See main edition for text of (a) and (b)]

(c) Value where spouse of decedent materially participated in farm or other business

(1) In general

Notwithstanding subsections[1] (a), in the case of an eligible joint interest in section 2040(c) property, the value included in the gross estate with respect to such interest by reason of this section shall be—

(A) the value of such interest, reduced by

(B) the sum of—

(i) the section 2040(c) value of such interest, and

(ii) the adjusted consideration furnished by the decedent's spouse.

[1] So in original. Probably should be "subsection".

(2) Limitations

(A) At least 50 percent of value to be included

Paragraph (1) shall in no event result in the inclusion in the decedent's gross estate of less than 50 percent of the value of the eligible joint interest.

(B) Aggregate reduction

The aggregate decrease in the value of the decedent's gross estate resulting from the application of this subsection shall not exceed $500,000.

(3) Eligible joint interest defined

For purposes of paragraph (1) the term "eligible joint interest" means any interest in property held by the decedent and the decedent's spouse as joint tenants or as tenants by the entirety, but only if—

(A) such joint interest was created by the decedent, the decedent's spouse, or both, and

(B) in the case of a joint tenancy, only the decedent and the decedent's spouse are joint tenants.

(4) Section 2040(c) property defined

For purposes of paragraph (1), the term "section 2040(c) property" means any interest in any real or tangible personal property which is devoted to use as a farm or used for farming purposes (within the meaning of paragraphs (4) and (5) of section 2032A(e)) or is used in any other trade or business.

(5) Section 2040(c) value

For purposes of paragraph (1), the term "section 2040(c) value" means—

(A) the excess of the value of the eligible joint interest over the adjusted consideration furnished by the decedent, the decedent's spouse, or both, multiplied by

(B) 2 percent for each taxable year in which the spouse materially participated in the operation of the farm or other trade or business but not to exceed 50 percent.

(6) Adjusted consideration

For the purpose of this subsection, the term "adjusted consideration" means—

(A) the consideration furnished by the individual concerned (not taking into account any consideration in the form of income or gain from the business of which the section 2040(c) property is a part) determined under rules similar to the rules set forth in subsection (a), and

(B) an amount equal to the amount of interest which the consideration referred to in subparagraph (A) would have earned over the period in which it was invested in the farm or other business if it had been earning interest throughout such period at 6 percent simple interest.

(7) Material participation

For purposes of paragraph (1), material participation shall be determined in a manner similar to the manner used for purposes of paragraph (1) of section 1402(a) (relating to net earnings from self-employment).

(8) Value

For purposes of this subsection, except where the context clearly indicates otherwise,

the term "value" means value determined without regard to this subsection.

(9) Election to have subsection apply

This subsection shall apply with respect to a joint interest only if the estate of the decedent elects to have this subsection apply to such interest. Such an election shall be made not later than the time prescribed by section 6075(a) for filing the return of tax imposed by section 2001 (including extensions thereof), and shall be made in such manner as the Secretary shall by regulations prescribe.

(d) Joint interests of husband and wife created before 1977

Under regulations prescribed by the Secretary—

(1) In general

In the case of any joint interest created before January 1, 1977, which (if created after December 31, 1976) would have constituted a qualified joint interest under subsection (b)(2) (determined without regard to clause (ii) of subsection (b)(2)(B)), the donor may make an election under this subsection to have paragraph (1) of subsection (b) apply with respect to such joint interest.

(2) Time for making election

An election under this subsection with respect to any property shall be made for the calendar quarter in 1977, 1978, or 1979 selected by the donor in a gift tax return filed within the time prescribed by law for filing a gift tax return for such quarter. Such an election may be made irrespective of whether or not the amount involved exceeds the exclusion provided by section 2503(b); but no election may be made under this subsection after the death of the donor.

(3) Tax effects of election

In the case of any property with respect to which an election has been made under this subsection, for purposes of this title—

(A) the donor shall be treated as having made a gift at the close of the calendar quarter selected under paragraph (2), and

(B) the amount of the gift shall be determined under paragraph (4).

(4) Amount of gift

For purposes of paragraph (3)(B), the amount of any gift is one-half of the amount—

(A) which bears the same ratio to the excess of (i) the value of the property on the date of the deemed making of the gift under paragraph (3)(A), over (ii) the value of such property on the date of the creation of the joint interest, as

(B) the excess of (i) the consideration furnished by the donor at the time of the creation of the joint interest, over (ii) the consideration furnished at such time by the donor's spouse, bears to the total consideration furnished by both spouses at such time.

(5) Special rule for paragraph (4)(A)

For purposes of paragraph (4)(A)—

(A) in the case of real property, if the creation was not treated as a gift at the time of the creation, or

(B) in the case of personal property, if the gift was required to be included on a gift tax return but was not so included, and the period of limitations on assessment under section 6501 has expired with respect to the tax (if any) on such gift,

then the value of the property on the date of the creation of the joint interest shall be treated as zero.

(6) Substantial improvements

For purposes of this subsection, a substantial improvement of any property shall be treated as the creation of a separate joint interest.

(e) Treatment of certain post-1976 terminations

(1) In general

If—

(A) before January 1, 1977, a husband and wife had a joint interest in property with right of survivorship,

(B) after December 31, 1976, such joint interest was terminated, and

(C) after December 31, 1976, a joint interest of such husband and wife in such property (or in property the basis of which in whole or in part reflects the basis of such property) was created.

then paragraph (1) of subsection (b) shall apply to the joint interest described in subparagraph (C) only if an election is made under subsection (d).

(2) Special rules

For purposes of applying subsection (d) to property described in paragraph (1) of this subsection—

(A) if the creation described in paragraph (1)(C) occurs after December 31, 1979, the election may be made only with respect to the calendar quarter in which such creation occurs, and

(B) the creation of the joint interest described in paragraphs (4) and (5) of subsection (d) is the creation of the joint interest described in paragraph (1)(A) of this subsection.

(Aug. 16, 1954, ch. 736, 68A Stat. 385; Oct. 16, 1962, Pub. L. 87-834, § 18(a)(2)(G), 76 Stat. 1052; Oct. 4, 1976, Pub. L. 94-455, title XX, § 2002(c)(1), (3), 90 Stat. 1855, 1856; Nov. 6, 1978, Pub. L. 95-600, title V, § 511(a), title VII, § 702(k)(2), 92 Stat. 2881, 2932.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600, § 511(a), added subsec. (c).

Subsec. (d). Pub. L. 95-600, § 702(k)(2), added subsec. (d).

Subsec. (e). Pub. L. 95-600, § 702(k)(2), added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 511(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to estates of decedents dying after December 31, 1978."

PART IV—TAXABLE ESTATE

§ 2051. Definition of taxable estate

For purposes of the tax imposed by section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the deductions provided for in this part.

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(r)(2), 92 Stat. 2938.)

AMENDMENTS

1978—Pub. L. 95-600 struck out "exemption and" following "gross estate the".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 702(r)(2) of Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6698 of this title.

§ 2055. Transfers for public, charitable, and religious uses

[See main edition for text of (a) to (d)]

(e) Disallowance of deductions in certain cases

[See main edition for text of (1) and (2)]

(3) In the case of a will executed before December 31, 1977, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a) to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1978, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1978 (which are required to amend or conform the governing instrument), become final, so that interest is in a trust which meets the requirements of such subparagraph (a)[1] or (B) (as the case may be), a deduction shall nevertheless be allowed. The Secretary may, by regulation, provide for the application of the provisions of this paragraph to trusts whose governing instruments are amended or conformed in accordance with this paragraph, and such regulations may provide for any adjustments in the application of the provisions of section 508 (relating to special rules with respect to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations), to such trusts made necessary by the application of this paragraph. If, by the due date for the filing of an estate tax return (including any extension thereof), the interest is in a charitable trust which, upon allowance of a deduction, would be described in section 4947(a)(1), or the interest passes directly to a person or for a use described in subsection (a), a deduction shall be allowed as if the governing instrument was amended or conformed under this paragraph. If the amendment or conformation of the governing instrument is made after the due date for the filing of the estate tax return (including any extension thereof), the deduction shall be allowed upon the filing of a timely claim for credit or refund (as provided for in section 6511) of an overpayment resulting from the application of this paragraph. In the case of a credit or refund as a result of an amendment or conformation made pursuant to this paragraph, no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed.

[See main edition for text of (f)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 514(a), 92 Stat. 2883.)

AMENDMENTS

1978—Subsec. (e)(3). Pub. L. 95-600 added "or (B)" preceding "of paragraph (2)", substituted "on or before December 31, 1978" for "on or before December 31, 1977" wherever appearing and "which meets the requirements of such subparagraph (a) or (B) (as the case may be)," for "which is a charitable remainder annuity trust, a charitable remainder unitrust (described in section 664), or a pooled income fund (described in section 642(c)(5)),".

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

Section 514(b) of Pub. L. 95-600 provided that: "Under regulations prescribed by the Secretary of the Treasury or his delegate, in the case of trusts created before December 31, 1977, provisions comparable to section 2055(e)(3) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall be deemed to be included in sections 170 and 2522 of the Internal Revenue Code of 1954".

§ 2056. Bequests, etc., to surviving spouse

[See main edition for text of (a), (b)]

(c) Limitation on aggregate of deductions

(1) Limitation

[See main edition for text of (A)]

(B) Adjustment for certain gifts to spouse

If a deduction is allowed to the decedent under section 2523 with respect to any gift made to his spouse after December 31, 1976, the limitation provided by subparagraph (A) (determined without regard to this subparagraph) shall be reduced (but not below zero) by the excess (if any) of—

[See main edition for text of (i)]

(ii) the aggregate of the deductions which would have been allowable under section 2523 with respect to gifts made after December 31, 1976, if the amount deductible under such section with respect to any gift required to be included in a gift tax return were 50 percent of its value.

For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account.

[1] So in original. Probably should be "(A)".

(C) Community property adjustment

The $250,000 amount set forth in subparagraph (A)(i) shall be reduced by the excess (if any) of—

(i) the amount of the subtraction determined under clauses (i), (ii), and (iii) of paragraph (2)(B), over

(ii) the excess of the aggregate of the deductions allowed under sections 2053 and 2054 over the amount taken into account with respect to such deductions under clause (iv) of paragraph (2)(B).

[See main edition for text of (2); (d)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(g)(1), (2), 92 Stat. 2930.)

CODIFICATION

Subsec. (c)(1)(C) is set out in this supplement to correct typographical error appearing in the main edition.

AMENDMENTS

1978—Subsec. (c)(1)(B). Pub. L. 95-600 inserted in cl. (ii) "required to be included in a gift tax return" following "with respect to any gift" and added following cl. (ii) "For purposes of this subparagraph, a gift which is includible in the gross estate of the donor by reason of section 2035 shall not be taken into account".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(g)(3) of Pub. L. 95-600 provided that: "The amendment made by this subsection [amending this section] shall apply to the estates of decedents dying after December 31, 1976."

§ 2057. Bequests, etc., to certain minor children

[See main edition for text of (a) and (b)]

(c) Limitation in the case of life estate or other terminable interest

A deduction shall be allowed under this section with respect to any interest in property passing to a minor child only to the extent that a deduction would have been allowable under section 2056(b) if such interest had passed to a surviving spouse of the decedent. For purposes of this subsection, an interest shall not be treated as terminable solely because the property will pass to another person if the child dies before the youngest child of the decedent attains age 23.

(d) Qualified minors' trust

(1) In general

For purposes of subsection (a), the interest of a minor child in a qualified minors' trust shall be treated as an interest in property which passes or has passed from the decedent to such child.

(2) Qualified minors' trust

For purposes of paragraph (1), the term "qualified minors' trust" means a trust—

(A) except as provided in subparagraph (D), all of the beneficiaries of which are minor children of the decedent,

(B) the corpus of which is property which passes or has passed from the decedent to such trust,

(C) except as provided in paragraph (3), all distributions from which to the beneficiaries of the trust before the termination of their interests will be pro rata,

(D) on the death of any beneficiary of which before the termination of the trust, the beneficiary's pro rata share of the corpus and accumulated income remains in the trust for the benefit of the minor children of the decedent who survive the beneficiary or vests in any person, and

(E) on the termination of which, each beneficiary will receive a pro rata share of the corpus and accumulated income.

(3) Certain disproportionate distributions permitted

A trust shall not be treated as failing to meet the requirements of paragraph (2)(C) solely by reason of the fact that the governing instrument of the trust permits the making of disproportionate distributions which are limited by an ascertainable standard relating to the health, education, support, or maintenance of the beneficiaries.

(4) Trustee may accumulate income

A trust which otherwise qualifies as a qualified minors' trust shall not be disqualified solely by reason of the fact that the trustee has power to accumulate income.

(5) Coordination with subsection (c)

In applying subsection (c) to a qualified minors' trust, those provisions of section 2056(b) which are inconsistent with paragraph (3) or (4) of this subsection shall not apply.

(6) Death of beneficiary before youngest child reaches age 23

Nothing in this subsection shall be treated as disqualifying an interest of a minor child in a trust solely because such interest will pass to another person if the child dies before the youngest child of the decedent attains age 23.

(e) Definitions

For purposes of this section—

(1) Minor child

The term "minor child" means any child of the decedent who has not attained the age of 21 before the date of the decedent's death.

(2) Adopted children

A relationship by legal adoption shall be treated as replacing a relationship by blood.

(3) Property passing from the decedent

The determination of whether an interest in property passes from the decedent to any person shall be made in accordance with section 2056(d).

(As amended Pub. L. 95-600, title VII, § 702(*l*)(1), (2), Nov. 6, 1978, 92 Stat. 2934, 2935.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600, § 702(*l*)(2), substituted "attains age 23" for "attains age 21".

Subsec. (d). Pub. L. 95-600, § 702(*l*)(1), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 95-600, § 702(*l*)(1), redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(*l*)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending

this section] shall apply to the estates of decedents dying after December 31, 1976."

Subchapter B—Estates of Nonresidents Not Citizens

§ 2107. Expatriation to avoid tax

REFERENCES IN TEXT

Sections 350 and 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1482, 1487), referred to in subsec. (d), were repealed by Pub. L. 95-432, §§ 1, 2, Oct. 10, 1978, 92 Stat. 1046, respectively.

Subchapter C—Miscellaneous

§ 2204. Discharge of fiduciary from personal liability

[See main edition for text of (a) to (c)]

(d) Good faith reliance on gift tax returns

If the executor in good faith relies on gift tax returns furnished under section 6103(e)(3) for determining the decedent's adjusted taxable gifts, the executor shall be discharged from personal liability with respect to any deficiency of the tax imposed by this chapter which is attributable to adjusted taxable gifts which—

(1) are made more than 3 years before the date of the decedent's death, and

(2) are not shown on such returns.

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(p)(1), 92 Stat. 2937.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-600 added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(p)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to the estates of decedents dying after December 31, 1976."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subsec. (b) by section 1902(a)(9) of Pub. L. 94-455 applicable in the case of estates of decedents dying after Dec. 31, 1970, see section 1902(c)(1) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2011 of this title.

CHAPTER 12—GIFT TAX

Subchapter A—Determination of Tax Liability

§ 2501. Imposition of tax

(a) Taxable transfers

[See main edition for text of (1) to (4)]

(5) Transfers to political organizations

Paragraph (1) shall not apply to the transfer of money or other property to a political organization (within the meaning of section 527(e)(1)) for the use of such organization.

[See main edition for text of (b) to (d)]

REFERENCES IN TEXT

Sections 350 and 355 of the Immigration and Nationality Act, as amended (8 U.S.C. 1482, 1487), referred to in subsec. (a)(3)(A), were repealed by Pub. L. 95-432, §§ 1, 2, Oct. 10, 1978, 92 Stat. 1046, respectively.

CODIFICATION

Subsec. (a)(5) is set out in this supplement to correct typographical error appearing in the main edition.

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1902(c)(2) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 703(j)(12), Nov. 6, 1978, 92 Stat. 2942, provided that: "The amendments made by paragraphs (10), (11), and (12) (D) and (E) of subsection (a) [amending sections 2501, 2522, and 2523 of this title] shall apply with respect to gifts made after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 305, 351, 1101, 2502, 2505, 2511, 2621 of this title.

§ 2503. Taxable gifts

[See main edition for text of (a) to (c)]

(d) Individual retirement accounts, etc., for spouse

For purposes of subsection (b), any payment made by an individual for the benefit of his spouse—

(1) to an individual retirement account described in section 408(a),

(2) for an individual retirement annuity described in section 408(b), or

(3) for a retirement bond described in section 409,

shall not be considered a gift of a future interest in property to the extent that such payment is allowable as a deduction under section 220.

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(j)(2), 92 Stat. 2931.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-600 added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(j)(3)(B) of Pub. L. 95-600 provided that: "The amendment made by paragraph (2) [amending this section] shall apply to transfers made after December 31, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1015, 2001, 2012, 2040, 2101, 2515, 6019 of this title.

Subchapter B—Transfers

Sec.
2515. Tenancies by the entirety in real property.
2515A. Tenancies by the entirety in personal property.

AMENDMENTS

1978—Pub. L. 95-600, title VII, § 702(k)(1)(C), Nov. 6, 1978, 92 Stat. 2932, substituted in item 2515 "Tenancies by the entirety in real property" for "Tenancies by the entirety" and added item 2515A.

§ 2513. Gift by husband or wife to third party

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1015, 2001, 2012, 6103 of this title.

§ 2515. Tenancies by the entirety in real property

[See main edition for text of (a) to (d)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(k)(1)(B), 92 Stat. 2932.)

AMENDMENTS

1978—Pub. L. 95-600 substituted "Tenancies by the entirety in real property" for "Tenancies by the entirety" in section catchline.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to joint interests created after Dec. 31, 1976, see section 702(k)(1)(D) of Pub. L. 95-600, set out as an Effective Date note under section 2515A of this title.

§ 2515A. Tenancies by the entirety in personal property

(a) Certain actuarial computations not required

In the case of—

(1) the creation (either by one spouse alone or by both spouses) of a joint interest of a husband and wife in personal property with right of survivorship, or

(2) additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise,

the retained interest of each spouse shall be treated as one-half of the value of their joint interest.

(b) Exception

Subsection (a) shall not apply with respect to any joint interest in property if the fair market value of the interest or of the property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses.

(Added Pub. L. 95-600, title VII, § 702(k)(1)(A), Nov. 6, 1978, 92 Stat. 2932.)

EFFECTIVE DATE

Section 702(k)(1)(D) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [enacting this section and amending section 2515 of this title] shall apply to joint interests created after December 31, 1976."

§ 2517. Certain annuities under qualified plans

[See main edition for text of (a) to (c)]

(d) Employee defined

For purposes of this section, the term "employee" includes a former employee. In the case of a retirement plan described in paragraph (5) of subsection (a), such term means the individual for whose benefit the plan was established.

CODIFICATION

Subsec. (d) is set out in this supplement to correct typographical error appearing in the main edition.

§ 2518. Disclaimers

[See main edition for text of (a)]

(b) Qualified disclaimer defined

For purposes of subsection (a), the term "qualified disclaimer" means an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

[See main edition for text of (1) to (3)]

(4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—

(A) to the spouse of the decedent, or

(B) to a person other than the person making the disclaimer.

[See main edition for text of (c)]

(As amended Pub. L. 95-600, title VII, § 702(m)(1), Nov. 6, 1978, 92 Stat. 2935.)

AMENDMENTS

1978—Subsec. (b)(4). Pub. L. 95-600 added provision relating to the spouse of the decedent.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(m)(2) of Pub. L. 95-600 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976."

Subchapter C—Deductions

§ 2522. Charitable and similar gifts

CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For includibility of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95-600, set out as a note under section 2055 of this title.

CHAPTER 13—TAX ON CERTAIN GENERATION SKIPPING TRANSFERS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 667, 7517 of this title.

Subchapter A—Tax Imposed

§ 2601. Tax imposed

EFFECTIVE DATE

Section 2006(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 702(n)(1), Nov. 6, 1978, 92 Stat. 2935, provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section [enacting this chapter and sections 303(d), 691(c)(3), and 2013(g) of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611(a) of the Internal Revenue Code of 1954) made after June 11, 1976.

"(2) Exceptions.—The amendments made by this section shall not apply to any generation-skipping transfer—

"(A) under a trust which was irrevocable on June 11, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after June 11, 1976, or

"(B) in the case of a decedent dying before January 1, 1982, pursuant to a will (or revocable trust) which was in existence on June 11, 1976, and was not amended at any time after that date in any respect which will result in the creation of, or increasing the amount of, any generation-skipping transfer.

For purposes of subparagraph (B), if the decedent on June 11, 1976, was under a mental disability to change the disposition of his property, the period set forth in such subparagraph shall not expire before the date which is 2 years after the date on which he first regains his competence to dispose of such property.

"(3) Trust equivalents.—For purposes of paragraph (2), in the case of a trust equivalent within the meaning of subsection (d) of section 2611 of the Internal Revenue Code of 1954, the provisions of such subsection (d) shall apply."

Amendment of section 2006(c) of Pub. L. 94-455, set out above, by section 702(n)(1) of Pub. L. 95-600, effective Oct. 4, 1976, see section 702(n)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 2613 of this title.

§ 2602. Amount of tax

(a) General rule

The amount of the tax imposed by section 2601 with respect to any transfer shall be the excess of—

(1) a tentative tax computed in accordance with the rate schedule set forth in section 2001(c) (as in effect on the date of transfer) on the sum of—

[*See main edition for text of (A) and (B)*]

(C) the amount of the adjusted taxable gifts (within the meaning of section 2001(b), as modified by section 2001(e)) made by the deemed transferor before this transfer, and

[*See main edition for text of (D), (2); (b) and (c)*]

(d) Alternate valuation

(1) In general

In the case of—

(A) 1 or more generation-skipping transfers from the same trust which have the same deemed transferor and which are taxable terminations occurring at the same time as the death of such deemed transferor (or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor); or

[*See main edition for text of (B)*]

the trustee may elect to value all of the property transferred in such transfers in accordance with section 2032.

(2) Special rules

If the trustee makes an election under paragraph (1) with respect to any generation-skipping transfer, section 2032 shall be applied by taking into account (in lieu of the date of the decedent's death) the following date:

(A) in the case of any generation-skipping transfer described in paragraph (1)(A), the date of the death of the deemed transferor (or beneficiary) described in such paragraph, or

[*See main edition for text of (B); (e)*]

(As amended Pub. L. 95-600, title VII, § 702(h)(2), (n)(4), Nov. 6, 1978, 92 Stat. 2931, 2936.)

AMENDMENTS

1978—Subsec. (a)(1)(C). Pub. L. 95-600, § 702(h)(2), inserted ", as modified by section 2001(e)" following "within the meaning of section 2001(b)".

Subsec. (d)(1)(A). Pub. L. 95-600, § 702(n)(4)(A), inserted "(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)" following "such deemed transferor".

Subsec. (d)(2)(A). Pub. L. 95-600, § 702(n)(4)(B), inserted "(or beneficiary)" following "the deemed transferor".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 702(h)(2) of Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, except that such amendment shall not apply to transfers made before Jan. 1, 1977, see section 702(h)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 2001 of this title.

Amendment by section 702(n)(4) of Pub. L. 95-600 effective as if included in this chapter as added by section 2006 of Pub. L. 94-455, see section 702(n)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 2613 of this title.

Subchapter B—Definitions and Special Rules

§ 2613. Other definitions

[*See main edition for text of (a)*]

(b) Taxable termination

For purposes of this chapter—

[*See main edition for text of (1)*]

(2) Time certain terminations deemed to occur

[*See main edition for text of (A)*]

(B) Same beneficiary has more than 1 present interest or present power

In any case where a younger generation beneficiary of a trust has both a present interest and a present power, or more than 1 present interest or present power, in the trust, except to the extent provided in regulations prescribed by the Secretary, the termination with respect to each such present interest or present power shall be treated as occurring at the time when the last such termination occurs.

[*See main edition for text of (C) and (D), (3) to (7); (c) and (d)*]

(e) Certain powers not taken into account

(1) Limited power to appoint among lineal descendants of the grantor

For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries who are lineal descendants of the grantor assigned to a generation younger than the generation assignment of such individual.

(2) Powers of independent trustees

(A) In general

For purposes of this chapter, an individual shall be treated as not having any power in a trust if such individual—

(i) is a trustee who has no interest in the trust,

(ii) is not a related or subordinate trustee, and

(iii) does not have any present or future power in the trust other than a power to dispose of the corpus of the trust or the income therefrom to a beneficiary or a class of beneficiaries, designated in the trust instrument.

(B) Related or subordinate trustee defined

For purposes of subparagraph (A), the term "related or subordinate trustee" means any trustee who is assigned to a younger generation than the grantor's generation and who is—

(i) the spouse of the grantor or of any beneficiary,

(ii) the father, mother, lineal descendant, brother, or sister of the grantor or of any beneficiary,

(iii) an employee of a corporation in which the stockholdings of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of voting control,

(iv) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive,

(v) a partner of a partnership in which the interest of the grantor, the trust, and the beneficiaries of the trust are significant from the viewpoint of operating control or distributive share of partnership income,

(vi) an employee of a corporation in which the grantor or any beneficiary of the trust is an executive, or

(vii) an employee of a partnership in which the grantor or any beneficiary of the trust is a partner.

[*See main edition for text of (f)*]

(As amended Pub. L. 95-600, title VII, § 702(n)(2), (3), Nov. 6, 1978, 92 Stat. 2935, 2936.)

AMENDMENTS

1978—Subsec. (b)(2)(B). Pub. L. 95-600, § 702(n)(3), substituted "a present interest and a present power" for "an interest and a power" and "present interest or present power" for "interest or power" wherever appearing.

Subsec. (e). Pub. L. 95-600, § 702(n)(2), added provisions relating to the powers of independent trustees and the definition of a related or subordinate trustee.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(n)(5) of Pub. L. 95-600 provided that:

"(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 2602 of this title, and provision set out as a note under section 2601 of this title] shall take effect as if included in chapter 13 of the Internal Revenue Code of 1954 [this chapter] as added by section 2006 of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, § 2006, Oct. 4, 1976, 90 Stat. 1879].

"(B) The amendment made by paragraph (1) [amending provision set out as a note under section 2601 of this title] shall take effect on October 4, 1976."

§ 2614. Special rules

(a) Basis adjustment

If property is transferred to any person pursuant to a generation-skipping transfer which occurs before the death of the deemed transferor, the basis of such property in the hands of the transferee shall be increased (but not above the fair market value of such property) by an amount equal to that portion of the tax imposed by section 2601 with respect to the transfer which is attributable to the excess of the fair market value of such property over its adjusted basis immediately before the transfer. If property is transferred in a generation-skipping transfer subject to tax under this chapter which occurs at the same time as, or after, the death of the deemed transferor, the basis of such property shall be adjusted—

(1) in the case of such a transfer occurring after June 11, 1976, and before January 1, 1980, in a manner similar to the manner provided under section 1014(a), and

(2) in the case of such a transfer occurring after December 31, 1979, in a manner similar to the manner provided by section 1023 without regard to subsection (d) thereof (relating to basis of property passing from a decedent dying after December 31, 1979).

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 95-600, title VII, § 702(c)(1)(B), Nov. 6, 1978, 92 Stat. 2926.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 specified that adjustments as provided by section 1023 would relate to transfers occurring after Dec. 31, 1979 and added provisions relating to transfers occurring after June 11, 1976 and before Jan. 31, 1980 to be adjusted in a manner similar to that provided under section 1014(a).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by section 702(c)(1)(B) of Pub. L. 95-600 to take effect as if included in the amendments and additions made by, and the appropriate provisions of Pub. L. 94-455, see section 702(c)(10) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1014 of this title.

Subtitle C—Employment Taxes

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 401, 408, 1402, 3503, 6011, 6103, 6302, 6501, 6513, 7507, 7509, 7651, 7655, 7701 of this title; title 5 section 5901; title 29 section 1302; title 31 section 68c; title 38 section 4114; title 42 sections 401, 405, 408, 418, 2705, 2971g; title 45 section 231f; title 48 section 1421h.

Subchapter A—Tax on Employees

§ 3101. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 4.95 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 5.05 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 5.08 percent;

(4) with respect to wages received during the calendar year 1981, the rate shall be 5.35 percent;

(5) with respect to wages received during the calendar years 1982 through 1984, the rate shall be 5.40 percent;

(6) with respect to wages received during the calendar years 1985 through 1989, the rate shall be 5.70 percent; and

(7) with respect to wages received after December 31, 1989, the rate shall be 6.20 percent.

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages received during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages received after December 31, 1985, the rate shall be 1.45 percent.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

(As amended Dec. 20, 1977, Pub. L. 95-216, title I, § 101(a)(1), (b)(1), title III, § 317(b)(2), 91 Stat. 1510, 1511, 1540.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c) is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Section 233 of such Act is classified to section 433 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-216, § 101(a)(1), substituted "1974 through 1977" for "1974 through 2010" in par. (1), substituted "wages received during the calendar year 1978, the rate shall be 5.05 percent" for "wages received after December 31, 2010, the rate shall be 5.95 percent" in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95-216, § 101(b)(1), substituted "wages received during the calendar year 1978, the rate shall be 1.00 percent" for "wages received during the calendar years 1978 through 1980, the rate shall be 1.10 percent" in par. (2), substituted "wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent" for "wages received during the calendar years 1981 through 1985, the rate shall be 1.35 percent", in par. (3), substituted "wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent" for "wages received after December 31, 1985, the rate shall be 1.50 percent" in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95-216, § 317(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-216 applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 1401 of this title.

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

§ 3102. Deduction of tax from wages

(a) Requirement

The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar quarter pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar quarter is less than $50; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

[*See main edition for text of* (b)]

(c) Special rule for tips

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement fur-

nished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the year) in which the tips were deemed paid, by deducting the amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following year) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such year as if the tips so estimated constituted the actual tips so reported, and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such year (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the year to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the year.

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(As amended Dec. 20, 1977, Pub. L. 95–216, title III, § 355(a), (b), 91 Stat. 1555.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–216, § 355(a), substituted "cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable" for "cash remuneration to which paragraph (7)(B) or (C) or (10) of section 3121(a) is applicable" and added "and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100;".

Subsec. (c)(1). Pub. L. 95–216, § 355(b)(1), substituted "year" for "quarter".

Subsec. (c)(2). Pub. L. 95–216, § 355(b)(1), substituted "year" for "quarter".

Subsec. (c)(3)(A). Pub. L. 95–216, § 355(b)(2)(A), substituted "in any calendar year" for "in any quarter of the calendar year".

Subsec. (c)(3)(B), (C). Pub. L. 95–216, § 355(b)(2)(B), substituted "year" for "quarter", wherever appearing.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 355(c) of Pub. L. 95–216 provided that: "The amendments made by this section [amending subsecs. (a) and (c)(1) to (3) of this section] shall apply with respect to remuneration paid and to tips received after December 31, 1977."

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95–427, set out as a note under section 62 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3505, 3507, 6053, 6428 of this title.

Subchapter B—Tax on Employers

§ 3111. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a) and (t)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 4.95 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 5.05 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 5.08 percent;

(4) with respect to wages paid during the calendar year 1981, the rate shall be 5.35 percent;

(5) with respect to wages paid during the calendar years 1982 through 1984, the rate shall be 5.40 percent;

(6) with respect to wages paid during the calendar years 1985 through 1989, the rate shall be 5.70 percent; and

(7) with respect to wages paid after December 31, 1989, the rate shall be 6.20 percent.

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a) and (t)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

(c) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

(As amended Dec. 20, 1977, Pub. L. 95-216, title I, § 101(a)(2), (b)(2), title III, §§ 315(b), 317(b)(2), 91 Stat. 1511, 1512, 1537, 1540.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c) is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Section 233 of such Act is classified to section 433 of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-216, §§ 101(a)(2), 315(b), substituted "(as defined in section 3121(a) and (t))" for "(as defined in section 3121(a))" in the provisions preceding par. (1), substituted "1974 through 1977" for "1974 through 2010" in par. (1), substituted "wages paid during the calendar year 1978, the rate shall be 5.05 percent" for "wages paid after December 31, 2010, the rate shall be 5.95 percent" in par. (2), and added pars. (3) to (7).

Subsec. (b). Pub. L. 95-216, §§ 101(b)(2), 315(b), substituted "(as defined in section 3121(a) and (t))" for "(as defined in section 3121(a))" in the provisions preceding par. (1), substituted "wages paid during the calendar year 1978, the rate shall be 1.00 percent" for "wages paid during the calendar years 1978 through 1980, the rate shall be 1.10 percent", in par. (2), substituted "wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent" for wages paid during the calendar years 1981 through 1985, the rate shall be 1.35 percent" in par. (3), substituted "wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent" for "wages paid after December 31, 1985, the rate shall be 1.50 percent" in par. (4), and added pars. (5) and (6).

Subsec. (c). Pub. L. 95-216, § 317(b)(2), added subsec. (c).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-216 applicable with respect to remuneration paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 1401 of this title.

Section 315(c) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsecs. (a) and (b) of this section and enacting section 3121(t) of this title] shall apply with respect to wages paid with respect to employment performed in months after December 1977."

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 408, 3112, 3121, 3122, 3125, 3211, 3221, 3507, 6051, 6205, 6413, 6690 of this title; title 42 sections 401, 401a, 418, 907, 1395l.

§ 3112. Instrumentalities of the United States

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

Subchapter C—General Provisions

§ 3121. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

[*See main edition for text of (1) to (6)*]

(7)[*See main edition for text of (A) and (B)*]

(C) cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g)(5);

[*See main edition for text of (8) and (9)*]

(10) remuneration paid by an employer in any calendar year to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

[*See main edition for text of (11) to (13)*]

(14) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(15) any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 in any calen-

dar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(17) any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans); or

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

(b) Employment

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that such term shall not include—

[*See main edition for text of (1) to (9)*]

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

[*See main edition for text of (11) to (16)*]

(17) service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

[*See main edition for text of (18) to (20); (c) to (f)*]

(g) Agricultural labor

For purposes of this chapter, the term "agricultural labor" includes all service performed—

[*See main edition for text of (1) to (3)*]

(4) [*See main edition for text of (A)*]

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

[*See main edition for text of (C); (5)*]

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

[*See main edition for text of (h) to (j)*]

(k) Exemption of religious, charitable, and certain other organizations

[*See main edition for text of (1) to (3)*]

(4) Constructive filing of certificate where no refund or credit of taxes has been made

(A) In any case where—

(i) an organization described in section 501(c)(3) which is exempt from income tax under section 501(a) has not filed a valid waiver certificate under paragraph (1) of this subsection (or under the corresponding provision of prior law) as of the date of the enactment of this paragraph (or, if later, as of the earliest date on which it satisfies clause (ii) of this subparagraph), but

(ii) the taxes imposed by sections 3101 and 3111 have been paid with respect to the remuneration paid by such organization to its employees, as though such a certificate had been filed, during any period (subject to subparagraph (B)(i)) of not less than three consecutive calendar quarters,

such organization shall be deemed (except as provided in subparagraph (B) of this paragraph) for purposes of subsection (b)(8)(B) and section 210(a)(8)(B) of the Social Security Act, to have filed a valid waiver certificate under paragraph (1) of this subsection (or under the corresponding

provision of prior law) on the first day of the period described in clause (ii) of this subparagraph effective (subject to subparagraph (C)) on the first day of the calendar quarter in which such period began, and to have accompanied such certificate with a list containing the signature, address, and social security number (if any) of each employee with respect to whom the taxes described in such subparagraph were paid (and each such employee shall be deemed for such purposes to have concurred in the filing of the certificate).

(B) Subparagraph (A) shall not apply with respect to any organization if—

(i) the period referred to in clause (ii) of such subparagraph (in the case of that organization) terminated before the end of the earliest calendar quarter falling wholly or partly within the time limitation (as defined in section 205(c)(1)(B) of the Social Security Act) immediately preceding the date of the enactment of this paragraph, or

(ii) a refund or credit of any part of the taxes which were paid as described in clause (ii) of such subparagraph with respect to remuneration for services performed on or after the first day of the earliest calendar quarter falling wholly or partly within the time limitation (as defined in section 205(c)(1)(B) of the Social Security Act) immediately preceding the first day of the calendar quarter of enactment of this paragraph (other than a refund or credit which would have been allowed if a valid waiver certificate filed under paragraph (1) had been in effect) has been obtained by the organization or its employees prior to September 9, 1976, or

(iii) the organization, prior to the end of the period referred to in clause (ii) of such subparagraph (and, in the case of an organization organized on or before October 9, 1969, prior to October 19, 1976), had applied for a ruling or determination letter acknowledging it to be exempt from income tax under section 501(c)(3), and it subsequently received such ruling or determination letter and did not pay any taxes under sections 3101 and 3111 with respect to any employee with respect to any quarter ending after the twelfth month following the date of mailing of such ruling or determination letter and did not pay any such taxes with respect to any quarter beginning after the later of (I) December 31, 1975 or (II) the date on which such ruling or determination letter was issued.

(C) In the case of any organization which is deemed under this paragraph to have filed a valid waiver certificate under paragraph (1), if—

(i) the period with respect to which the taxes imposed by sections 3101 and 3111 were paid by such organization (as described in subparagraph (A)(ii)) terminated prior to October 1, 1976, or

(ii) the taxes imposed by sections 3101 and 3111 were not paid during the period referred to in clause (i) (whether such period has terminated or not) with respect to remuneration paid by such organization to individuals who became its employees after the close of the calendar quarter in which such period began,

taxes under sections 3101 and 3111—

(iii) in the case of an organization which meets the requirements of this subparagraph by reason of clause (i), with respect to remuneration paid by such organization after the termination of the period referred to in clause (i) and prior to July 1, 1977; or

(iv) in the case of an organization which meets the requirements of this subparagraph by reason of clause (ii), with respect to remuneration paid prior to July 1, 1977, to individuals who became its employees after the close of the calendar quarter in which the period referred to in clause (i) began,

which remain unpaid on the date of the enactment of this subparagraph, or which were paid after October 19, 1976, but prior to the date of the enactment of this subparagraph, shall not be due or payable (or, if paid, shall be refunded); and the certificate which such organization is deemed under this paragraph to have filed shall not apply to any service with respect to the remuneration for which the taxes imposed by sections 3101 and 3111 (which remain unpaid on the date of the enactment of this subparagraph, or were paid after October 19, 1976, but prior to the date of the enactment of this subparagraph) are not due and payable (or are refunded) by reason of the preceding provisions of this subparagraph. In applying this subparagraph for purposes of title II of the Social Security Act, the period during which reports of wages subject to the taxes imposed by sections 3101 and 3111 were made by any organization may be conclusively treated as the period (described in subparagraph (A)(ii) during which the taxes imposed by such sections were paid by such organization.

(5) Constructive filing of certificate where refund or credit has been made and new certificate is not filed

In any case where—

[*See main edition for text of (A)*]

(B) such organization has not, prior to April 1, 1978, filed a valid waiver certificate under paragraph (1) which is effective for a period beginning on or before the first day of the first calendar quarter with respect to which such refund or credit was made (or, if later, with the first day of the earliest calendar quarter for which such certificate may be in effect under paragraph (1)(B)(iii)) and which is accompanied by the list described in paragraph (1)(A),

such organization shall be deemed, for purposes of subsection (b)(8)(B) and section

210(a)(8)(B) of the Social Security Act, to have filed a valid waiver certificate under paragraph (1) of this subsection on April 1, 1978, effective for the period beginning on the first day of the first calendar quarter with respect to which the refund or credit referred to in subparagraph (A) of this paragraph was made (or, if later, with the first day of the earliest calendar quarter falling wholly or partly within the time limitation (as defined in section 205(c)(1)(B) of the Social Security Act) immediately preceding the date of the enactment of this paragraph), and to have accompanied such certificate with a list containing the signature, address, and social security number (if any) of each employee described in subparagraph (A) of paragraph (4) including any employee with respect to whom taxes were refunded or credited as described in subparagraph (A) of this paragraph (and each such employee shall be deemed for such purposes to have concurred in the filing of the certificate). A certificate which is deemed to have been filed by an organization on April 1, 1978, shall supersede any certificate which may have been actually filed by such organization prior to that day except to the extent prescribed by the Secretary.

(6) Application of certain provisions to cases of constructive filing

All of the provisions of this subsection (other than subparagraphs (B), (F), and (H) of paragraph (1)), including the provisions requiring payment of taxes under sections 3101 and 3111 with respect to the services involved (except as provided in paragraph (4)(C)), shall apply with respect to any certificate which is deemed to have been filed by an organization on any day under paragraph (4) or (5), in the same way they would apply if the certificate had been actually filed on that day under paragraph (1); except that—

[*See main edition for text of (A) to (C)*]

(7) Both employee and employer taxes payable by organization for retroactive period in cases of constructive filing

Notwithstanding any other provision of this chapter, in any case where an organization described in paragraph (5)(A) has not filed a valid waiver certificate under paragraph (1) prior to April 1, 1978, and is accordingly deemed under paragraph (5) to have filed such a certificate on April 1, 1978, the taxes due under section 3101, with respect to services constituting employment by reason of such certificate for any period prior to that date (along with the taxes due under section 3111 with respect to such services and the amount of any interest paid in connection with the refund or credit described in paragraph (5)(A)) shall be paid by such organization from its own funds and without any deduction from the wages of the individuals who performed such services; and those individuals shall have no liability for the payment of such taxes.

(8) Extended period for payment of taxes for retroactive coverage

Notwithstanding any other provision of this title, in any case where—

(A) an organization is deemed under paragraph (4) to have filed a valid waiver certificate under paragraph (1), but the applicable period described in paragraph (4)(A)(ii) has terminated and part or all of the taxes imposed by sections 3101 and 3111 with respect to remuneration paid by such organization to its employees after the close of such period remains payable notwithstanding paragraph (4)(C), or

(B) an organization described in paragraph (5)(A) files a valid waiver certificate under paragraph (1) by March 31, 1978, as described in paragraph (5)(B), or (not having filed such a certificate by that date) is deemed under paragraph (5) to have filed such a certificate on April 1, 1978, or

(C) an individual files a request under section 3 of Public Law 94-563, or under section 312(c) of the Social Security Amendments of 1977, to have service treated as constituting remuneration for employment (as defined in section 3121(b) and in section 210(a) of the Social Security Act),

the taxes due under sections 3101 and 3111 with respect to services constituting employment by reason of such certificate for any period prior to the first day of the calendar quarter in which the date of such filing or constructive filing occurs, or with respect to service constituting employment by reason of such request, may be paid in installments over an appropriate period of time, as determined under regulations prescribed by the Secretary, rather than in a lump sum.

[*See main edition for text of (l) to (r)*]

(s) Concurrent employment by two or more employers

For purposes of sections 3102, 3111, and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(t) Special rule for determining wages subject to employer tax in case of certain employers whose employees receive income from tips

If the wages paid by an employer with respect to the employment during any month of an individual who (for services performed in connection with such employment) receives tips which constitute wages, and to which section 3102(a) applies, are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act), the wages so paid shall be deemed for purposes of section 3111 to be equal to such total amount.

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, §§ 312(a), (b), (d), (f), (g), 314(a), 315(a), 356(a)-(d), 91 Stat. 1532-1536, 1555; Oct. 17, 1978, Pub. L. 95-472, § 3(b), 92 Stat. 1333; Nov. 6, 1978, Pub. L. 95-600, title I, § 164(b)(3), 92 Stat. 2814.)

REFERENCES IN TEXT

The date of enactment of this subparagraph, referred to in subsec. (k)(4)(C), is Dec. 20, 1977.

The Social Security Act, referred to in subsec. (k)(4)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3 of Public Law 94-563, referred to in subsec. (k)(8)(C), is Pub. L. 94-563, § 3, Oct. 19, 1976, 90 Stat. 2658, which is set out as a note below.

Section 312(c) of the Social Security Amendments of 1977, referred to in subsec. (k)(8)(C), is Pub. L. 95-216, title III, § 312(c), Dec. 20, 1977, 91 Stat. 1533, which is set out as a note below.

The Social Security Act, referred to in subsec. (k)(8)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Section 210(a) of such Act is classified to section 410(a) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Fair Labor Standards Act of 1938, referred to in subsec. (t), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. Sections 3(m) and 6(a)(1) of such Act are classified to sections 203(m) and 206(a)(1), respectively, of Title 29. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

AMENDMENTS

1978—Subsec. (a)(17). Pub. L. 95-472 added subsec. (a)(17).

Subsec. (a)(18). Pub. L. 95-600 added subsec. (a)(18).

1977—Subsec. (a)(7)(C). Pub. L. 95-216, § 356(a), substituted "year" for "quarter" wherever appearing and "$100" for "$50".

Subsec. (a)(10). Pub. L. 95-216, § 356(a), substituted "year" for "quarter" wherever appearing and "$100" for "$50".

Subsec. (a)(16). Pub. L. 95-216, § 356(b), added subsec. (a)(16).

Subsec. (b)(10). Pub. L. 95-216, § 356(c), struck out subpar. (A) which had related to service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a) or under section 521, if the remuneration for such service was less than $50, struck out the designation "(B)" preceding the remainder of subsec. (b)(10), and redesignated former cls. (i) and (ii) of former subpar. (B) as subpars. (A) and (B).

Subsec. (b)(17)(A). Pub. L. 95-216, § 356(d), substituted "year" for "quarter".

Subsec. (g)(4)(B). Pub. L. 95-216, § 356(d), substituted "year" for "quarter".

Subsec. (k)(4)(A). Pub. L. 95-216, § 312(b)(2), (f), substituted "(or, if later, as of the earliest date on which it satisfies clause (ii) of this subparagraph)" for "or any subsequent date" in cl. (i) and, in the provisions following cl. (ii), added "(subject to subparagraph (C))" following "effective".

Subsec. (k)(4)(B)(ii). Pub. L. 95-216, § 312(b)(4), substituted "first day of the calendar quarter" for "date".

Subsec. (k)(4)(B)(iii). Pub. L. 95-216, § 312(g), added subsec. (k)(4)(B)(iii).

Subsec. (k)(4)(C). Pub. L. 95-216, § 312(b)(1), added subsec. (k)(4)(C).

Subsec. (k)(5). Pub. L. 95-216, § 312(a)(1), substituted "prior to April 1, 1978," for "prior to the expiration of 180 days after the date of the enactment of this paragraph," in subpar. (B), and, in the provisions following subpar. (B), substituted "April 1, 1978" for "the 181st day after the date of enactment of this paragraph" and substituted "April 1, 1978," for "such 181st day".

Subsec. (k)(6). Pub. L. 95-216, § 312(b)(3), inserted "(except as provided in paragraph (4)(C))" following "services involved" in the provisions preceding subpar. (A).

Subsec. (k)(7). Pub. L. 95-216, § 312(a)(2), substituted "prior to April 1, 1978," for "prior to the expiration of 180 days after the date of the enactment of this paragraph", "April 1, 1978," for "the 181st day after such date," and "prior to that date" for "prior to the first day of the calendar quarter in which such 181st day occurs".

Subsec. (k)(8). Pub. L. 95-216, § 312(a)(3), (d), amended subsec. (k)(8) first by substituting "prior to April 1, 1978," for "by the end of the 180-day period following the date of the enactment of this paragraph", "prior to April 1, 1978" for "within that period", and "on that date" for "on the 181st day following that date", and then further amending subsec. (k)(8) as so amended by dividing the existing provisions into introductory provisions, subpar. (B), and closing provisions, adding subpars. (A) and (C), substituting "by March 31, 1978" for "prior to April 1, 1978", "by that date" for "prior to April 1, 1978", and "on April 1, 1978" for "on that date" in subpar. (B) as so redesignated, and, in the closing provisions, adding ", or with respect to service constituting employment by reason of such request," following "in which the date of such filing or constructive filing occurs".

Subsec. (s). Pub. L. 95-216, § 314(a), added subsec. (s).

Subsec. (t). Pub. L. 95-216, § 315(a), added subsec. (t).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95-600, set out as an Effective Date note under section 127 of this title.

Section 3(d) of Pub. L. 95-472, provided that: "The amendments made by this section [amending this section, section 3306 of this title, and section 409 of Title 42, the Public Health and Welfare] shall apply with respect to taxable years beginning after December 31, 1978."

EFFECTIVE DATE OF 1977 AMENDMENT

Section 312(h) of Pub. L. 95-216 provided that: "The amendments made by subsections (a), (b), (d), (e), (f), and (g) of this section [amending this section and provisions set out as a note under this section] shall be effective as though they had been included as a part of the amendments made to section 3121(k) of the Internal Revenue Code of 1954 by the first section of Public Law 94-563 [which enacted subsec. (k)(4) to (8) of this section] (or, in the case of the amendments made by subsection (e), as a part of section 3 of such Public Law)."

Section 314(c) of Pub. L. 95-216 provided that: "The amendments made by this section [enacting subsec. (s) of this section and subsec. (p) of section 3306 of this title] shall apply with respect to wages paid after December 31, 1978."

Enactment of subsec. (t) of this section by Pub. L. 95-216 applicable with respect to wages paid with respect to employment performed in months after Dec. 1977, see section 315(c) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 3111 of this title.

Section 356(e) of Pub. L. 95-216 provided that: "The amendments made by this section [to subsecs. (a)(7)(C), (10), (14)-(16), (b)(10), (17)(A), (g)(4)(B) of this section] shall apply with respect to remuneration paid and services rendered after December 31, 1977."

EFFECTIVE DATE OF 1976 AMENDMENT

* * * * *

Section 1207(f)(4) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, § 701(z)(1), Nov. 6, 1978, 92 Stat. 2921, provided that:

"(A) The amendments made by paragraphs (1)(A) and (2)(A) of subsection (e) [enacting subsec. (b)(20) of this section and section 410(a)(20) of Title 42, The Public Health and Welfare] shall apply to services performed after December 31, 1954. The amendments made by paragraphs (1)(B), (1)(C), and (2)(B) of such subsection [enacting sections 1401(c)(2)(F) and 3401(a)(7) of this title and section 411(c)(2)(F) of title 42] shall apply to taxable years ending after December 31, 1954. The amendments made by paragraph (3) of such subsection [enacting section 6050A and amending section 6652(b) of this title] shall apply to calendar years beginning after the date of the enactment of this Act [Oct. 4, 1976].

"(B) Notwithstanding subparagraph (A), if the owner or operator of any boat treated a share of the boat's catch of fish or other aquatic animal life (or a share of the proceeds therefrom) received by an individual after December 31, 1954, and before the date of the enactment of this act [Oct. 4, 1976] for services performed by such individual after December 31, 1954, on such boat as being subject to the tax under chapter 21 of the Internal Revenue Code of 1954 [this chapter], then the amendments made by paragraphs (1)(A) and (B) and (2) of subsection (c) shall not apply with respect to such services performed by such individual (and the share of the catch, or the proceeds therefrom, received by him for such services)."

* * * * *

Section 701(z)(2) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending section 1207(f)(4) of Pub. L. 94-455, set out above] shall take effect on October 4, 1976."

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427 set out as a note under section 62 of this title.

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(4) OF THIS SECTION

Section 312(c) of Pub. L. 95-216 provided that:

"In any case where—

"(1) an individual performed service, as an employee of an organization which is deemed under section 3121(k)(4) of the Internal Revenue Code of 1954 to have filed a waiver certificate under section 3121(k)(1) of such Code, on or after the first day of the applicable period described in subparagraph (A)(ii) of such section 3121(k)(4) and before July 1, 1977; and

"(2) the service so performed does not constitute employment (as defined in section 210(a) of the Social Security Act [section 410(a) of Title 42, The Public Health and Welfare] and section 3121(b) of such Code) because the waiver certificate which the organization is deemed to have filed is made inapplicable to such service by section 3121(k)(4)(C) of such Code, but would constitute employment (as so defined) in the absence of such section 3121(k)(4)(C),

the remuneration paid for such service shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [section 401 et seq. of Title 42]) accompanied by full payment of all of the taxes which would have been paid under section 3101 of such Code with respect to such remuneration but for such section 3121(k)(4)(C) (or by satisfactory evidence that appropriate arrangements have been made for the payment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for payment of the taxes which it would have been required to pay under section 3111 of such Code with respect to such remuneration in the absence of such section 3121(k)(4)(C)."

REMUNERATION FOR SERVICES DEEMED TO CONSTITUTE EMPLOYMENT; SERVICES FOR ORGANIZATIONS DEEMED TO HAVE FILED CERTIFICATES UNDER SUBSECTION (k)(5) OF THIS SECTION

Section 3 of Pub. L. 94-563 as amended by Pub. L. 95-216, title III, § 312(e), Dec. 20, 1977, 91 Stat. 1535, provided that:

"In any case where—

* * * * *

the remuneration paid for the portion of such service described in paragraph (3) shall, upon the request of such individual (filed on or before April 15, 1980, in such manner and form, and with such official, as may be prescribed by regulations made under title II of the Social Security Act [section 401 et seq. of Title 42]) accompanied by full repayment of the taxes which were paid under section 3101 of such Code [section 3101 of this title] with respect to such remuneration and so refunded or credited (or by satisfactory evidence that appropriate arrangements have been made for the repayment of such taxes in installments as provided in section 3121(k)(8) of such Code), be deemed to constitute remuneration for employment as so defined. In any case where remuneration paid by an organization to an individual is deemed under the preceding sentence to constitute remuneration for employment, such organization shall be liable (notwithstanding any other provision of such Code) for repayment of any taxes which it paid under section 3111 of such Code [section 3111 of this title] with respect to such remuneration and which were refunded or credited to it."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 176, 401, 406, 412, 1402, 1563, 3101, 3102, 3111, 3122, 3124, 3125, 3201, 3202, 3211, 3221, 3306, 3401, 6051, 6053, 6413, 6652 of this title; title 7 section 2042; title 20 section 125; title 29 section 1082; title 42 sections 401, 409, 410, 430; title 45 sections 231b, 231e; title 49 section 303.

§§ 3122 to 3125

COMMUTING EXPENSES

For application of these sections to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3301, 3503, 6103 of this title; title 31 section 68c; title 45 sections 358, 772.

Subchapter B—Tax on Employee Representatives

§ 3211. Rate of tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275, 1402, 3502, 6051, 6413 of this title; title 42 section 430; title 45 sections 231e, 231n.

Subchapter C—Tax on Employers

§ 3221. Rate of tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3211, 3231, 6205, 6413 of this title; title 42 section 430; title 45 section 231n.

Subchapter D—General Provisions

§ 3231. Definitions

[See main edition for text of (a) to (f)]

(g) Carrier

For purposes of this chapter, the term "carrier" means an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49.

[See main edition for text of (h)]

(As amended Oct. 17, 1978, Pub. L. 95-473, § 2(a)(2)(G), 92 Stat. 1465.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-473 substituted "express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49" for "express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1)".

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

§ 3301. Rate of tax

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

§ 3302. Credits against tax

[See main edition for text of (a) and (b)]

(c) Limit on total credits

[See main edition of text of (1)]

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

[See main edition for text of (A) to (C)]

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974.

[See main edition for text of (3); (d) and (e)]

(As amended Apr. 12, 1977, Pub. L. 95-19, title II, § 201(a), 91 Stat. 43.)

AMENDMENTS

1977—Subsec. (c)(2). Pub. L. 95-19 substituted "January 1, 1980" for "January 1, 1978" wherever appearing.

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

FINDINGS OF SECRETARY OF LABOR CONCERNING STEPS TAKEN BY STATES AS PREREQUISITE TO SUSPENSION UNTIL JANUARY 1, 1980, OF AUTOMATIC INCREASES IN FEDERAL UNEMPLOYMENT TAX

Section 201(b) of Pub. L. 95-19 provided that: "The amendment made by subsection (a) [amending subsec. (c)(2) of this section] shall not apply in the case of any State unless the Secretary of Labor finds that such State meets the requirements of section 110(b) of the Emergency Compensation and Special Unemployment Assistance Extension Act of 1975 [set out as a note under this section in the 1976 Edition of this Code]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3303, 3304, 3305, 3306 of this title; title 42 section 1101.

§ 3303. Conditions of additional credit allowance

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

§ 3304. Approval of State laws

(a) Requirements

The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

[See main edition for text of (1) to (5)]

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies,

in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that—

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution (other than an institution of higher education) to which section 3309(a)(1) applies, compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms,

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services may be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess, and

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity may be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions, and

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

[See main edition for text of (7) to (13)]

(14)(A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act),

[See main edition for text of (B) and (C)]

(15) the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as determined by the Secretary of Health, Education, and Welfare in regulations) for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes, and

(B) such safeguards are established as are necessary (as determined by the Secretary of Health, Education, and Welfare in regulations) to insure that such information is used only for the purposes authorized under subparagraph (A);

(17) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

[See main edition for text of (b) to (f)]

(As amended Apr. 12, 1977, Pub. L. 95-19, title III, § 302(a), (c), (e), 91 Stat. 44, 45; Nov. 12, 1977, Pub. L. 95-171, § 2(a), 91 Stat. 1353; Dec. 20, 1977, Pub. L. 95-216, title IV, § 403(b), 91 Stat. 1561.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(16)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1977—Subsec. (a)(6)(A)(i). Pub. L. 95-19, § 302(c)(1), (2), inserted a comma between "instructional" and "re-

search", substituted "two successive academic years or terms" for "two successive academic years", and struck out "and" following "the second of such academic years or terms,".

Subsec. (a)(6)(A)(iii). Pub. L. 95–19, § 302(c)(3), added cl. (iii).

Subsec. (a)(6)(A)(iv). Pub. L. 95–171 added cl. (iv).

Subsec. (a)(14)(A). Pub. L. 95–19, § 302(a), substituted "who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was" for "who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is".

Subsec. (a)(15). Pub. L. 95–19, § 302(e), substituted "March 31, 1980" for "September 30, 1979".

Subsec. (a)(16). Pub. L. 95–216 added subsec. (a)(16). Former subsec. (a)(16) redesignated (a)(17).

Subsec. (a)(17). Pub. L. 95–216 redesignated subsec. (a)(16) as (a)(17).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–216 effective on Dec. 20, 1977, see section 403(d) of Pub. L. 95–216, set out as an Effective Date of 1977 Amendment note under section 602 of Title 42, The Public Health and Welfare.

Section 2(b) of Pub. L. 95–171 provided that: "The amendments made by subsection (a) [enacting cl. (iv) of subsec. (a)(6)(A) of this section] shall apply with respect to weeks of unemployment which begin after December 31, 1977."

Section 302(d)(1) of Pub. L. 95–19 provided that: "The amendment made by subsection (a) [amending subsec. (a)(14)(A) of this section] shall take effect as if included in the amendment made by section 314 of the Unemployment Compensation Amendments of 1976 [which originally enacted subsec. (a)(14)(A) of this section in 1976]."

Section 302(d)(3) of Pub. L. 95–19 provided that: "The amendments made by subsection (c) [amending subsec. (a)(6)(A) of this section] shall take effect as if included in the amendments made by section 115(c) of the Unemployment Compensation Amendments of 1976 [which amended subsec. (a)(6)(A) of this section in 1976. See Effective Date of 1976 Amendment note below]."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 115(d) of Pub. L. 94–566, as amended Pub. L. 95–19, title III, § 301(a), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending subsec. (a)(6)(A) and adding subsec. (f) of this section, amending the catchline of section 3309 of this title, amending subsecs. (a)(1)(B), (b)(3), and (b)(6), and repealing subsec. (d) thereof] shall apply with respect to certifications of States for 1978 and subsequent years; except that—

"(A) the amendments made by subsections (a) and (b) [amending section 3309(a)(1)(B), (b)(3), and (b)(6) of this title] shall only apply with respect to services performed after December 31, 1977; and

"(B) the amendments made by subsection (c) [amending subsec. (a)(6)(A) and enacting subsec. (f) of this section and repealing section 3309(d) of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1977.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by subsection (c) [amending subsec. (a)(6)(A) and enacting subsec. (f) of this section and repealing section 3309(d) of this title] shall only apply with respect to weeks of unemployment which begin after December 31, 1978 (or if earlier, the date provided by State law)."

Section 312(c) of Pub. L. 94–566, as amended Pub. L. 95–19, title III, § 301(b), Apr. 12, 1977, 91 Stat. 43, effective Oct. 20, 1976, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending subsecs. (a)(12) and (c) of this section] shall apply with respect to certifications of States for 1978 and subsequent years.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending subsecs. (a)(12) and (c) of this section] shall apply with respect to the certification of such State for 1979 and subsequent years."

Section 506(c) of Pub. L. 94–566, as amended Pub. L. 95–19, title III, § 301(c), Apr. 12, 1977, 91 Stat. 44, effective Oct. 20, 1976, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending subsec. (a)(6)(B) of this section and section 3309(a)(2) of this title] shall apply with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after December 31, 1977.

"(2) In the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendments made by this section [amending subsec. (a)(6)(B) of this section and section 3309(a)(2) of this title] shall apply with respect to the certification of such State for 1979 and subsequent years, but only with respect to services performed after December 31, 1978."

Section 301(d) of Pub. L. 95–19 provided that: "The amendments made by this section [amending this Effective Date of 1976 Amendment note in three places] shall take effect on October 20, 1976."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–19, § 1, Apr. 12, 1977, 91 Stat. 39, provided that: "This Act [amending section 3304 of this title, enacting provisions set out as notes under sections 3302, 3304, and 3309 of this title, and amending provisions set out as notes under sections 3302, 3304, and 3309 of this title and sections 359 and 360 of Title 2, The Congress] may be cited as the 'Emergency Unemployment Compensation Extension Act of 1977'."

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95–427, set out as a note under section 62 of this title.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1974

Pub. L. 93–572, §§ 101 to 105, Dec. 31, 1974, 88 Stat. 1869–1872, as amended by Pub. L. 94–12, title VII, § 701(a), Mar. 29, 1975, 89 Stat. 65; Pub. L. 94–45, title I, §§ 101(a)–(f), 102(a), 103(a), 106, June 30, 1975, 89 Stat. 236–239; Pub. L. 94–566, title I, § 116(d)(3), Oct. 20, 1976, 90 Stat. 2672; Pub. L. 95–19, title I, §§ 101(a), 102(a) to (c), 103(a), 104(a), 105(a), 107(a), Apr. 12, 1977, 91 Stat. 39 to 42, provided that:

* * * * *

"SEC. 102. [Federal-State agreements]. (a) [State law requirements; termination of agreement]. Any State, the State unemployment compensation law of which is approved by the Secretary of Labor (hereinafter in this Act referred to as the 'Secretary') under section 3304 of the Internal Revenue Code of 1954 [this section] which desires to do so, may enter into and participate in an agreement with the Secretary under this Act, if such State law contains (as of the date such agreement is entered into) a requirement that extended compensation be payable thereunder as provided by the Federal-State Extended Unemployment Compensation Act of 1970 [set out as a note under this

section]. Any State which is a party to an agreement under this Act may, upon providing thirty days' written notice to the Secretary, terminate such agreement.

"(b) [Emergency compensation]. Any such agreement shall provide that the State agency of the State will make payments of emergency compensation—

* * * * *

"(2) for any week of unemployment which—

"(A) begins in—

"(i) an emergency benefit period (as defined in subsection (c)(3)), and

"(ii) the individual's period of eligibility (as defined in section 105(a)(2)); or

"(B) begins in an individual's additional eligibility period (as defined in section 105(a)(4)); except that no payment of emergency compensation shall be made to any individual for any week of unemployment which begins more than two years after the end of the benefit year for which he exhausted his rights to regular compensation.

* * * * *

"(c) [Regular and extended compensation rights, exhaustion; emergency benefit period; publication in Federal Register; State 'emergency on' and 'emergency off' indicators.] (1) For purposes of subsection (b)(1)(A), an individual shall be deemed to have exhausted his rights to regular compensation under a State law when—

* * * * *

"(3)(A)(i) For purposes of subsection (b)(2)(A), in the case of any State, an emergency benefit period—

* * * * *

"(ii) In the case of any State, no emergency benefit period shall last for a period of less than 13 consecutive weeks, and no emergency benefit period which began prior to January 1, 1976, shall end prior to such date.

* * * * *

"(e) [Emergency compensation account] (1) Any agreement under this Act with a State shall provide that the State will establish, for each eligible individual who files an application for emergency compensation, an emergency compensation account.

"(2) The amount established in such account for any individual shall be equal to the lesser of—

"(A) 50 per centum of the total amount of regular compensation (including dependents' allowances) payable to him with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation; or

"(B) 13 times his average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970 [set out as a note under this section in the main edition]) for his benefit year.

"(3) The amount determined under paragraph (2) with respect to any individual shall be reduced by the amount of any assistance paid to such individual under title II of the Emergency Jobs and Unemployment Assistance Act of 1974 [see Pub. L. 93-567, title II, set out as a note under this section in the main edition], for any weeks of unemployment in the 65-week period preceding the first week of unemployment with respect to which compensation is payable to such individual under this Act.

"(f) [Effective dates] (1) No emergency compensation shall be payable to any individual under an agreement entered into under this Act for any week beginning before whichever of the following is the latest:

* * * * *

"(2) No emergency compensation shall be payable to any individual under an agreement entered into under this Act—

"(A) for any week ending after October 31, 1977, or

"(B) in the case of an individual who (for a week ending after the beginning of his most recent benefit year and before October 31, 1977) had a week with respect to which emergency compensation was payable under such agreement, for any week ending after January 31, 1978.

* * * * *

"(h) [Denial of emergency compensation to individuals who refuse offers of suitable work or who are not actively seeking work]. (1) In addition to any eligibility requirement of the applicable State law, emergency compensation shall not be payable for any week to any individual otherwise eligible to receive such compensation if during such week such individual—

"(A) fails to accept any offer of suitable work or to apply for any suitable work to which he was referred by the State agency, or

"(B) fails to actively engage in seeking work.

"(2) If any individual is ineligible for emergency compensation for any week by reason of a failure described in subparagraph (A) or (B) of paragraph (1), the individual shall be ineligible to receive emergency compensation for any week which begins during a period which—

"(A) begins with the week following the week in which such failure occurs, and

"(B) does not end until such individual has been employed during at least 4 weeks which begin after such failure and the total of the remuneration earned by the individual for being so employed is not less than the product of 4 multiplied by the individual's average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970 [set out as a note under this section in the main edition]) for his benefit year.

"(3) Emergency compensation shall not be denied under paragraph (1) to any individual for any week by reason of a failure to accept an offer of, or apply for, suitable work—

"(A) if the gross average weekly remuneration payable to such individual for the position does not exceed the sum of—

"(i) the individual's average weekly benefit amount (as determined for purposes of section 202(b)(1)(C) of the Federal-State Extended Unemployment Compensation Act of 1970 [set out as a note under this section in the main edition]) for his benefit year, plus

"(ii) the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week;

"(B) if the position was not offered to such individual in writing and was not listed with the State employment service;

"(C) if such failure would not result in a denial of compensation under the provisions of the applicable State law to the extent that such provisions are not inconsistent with the provisions of paragraph (4); or

"(D) if the position pays wages less than the higher of—

"(i) the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938 [section 206(a)(1) of Title 29, Labor], without regard to any exemption; or

"(ii) any applicable State or local minimum wage.

"(4) For purposes of this subsection—

"(A) The term 'suitable work' means, with respect to any individual, any work which is within such individual's capabilities; except that, if the individual furnishes evidence satisfactory to the State agency that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such indi-

vidual shall be made in accordance with the applicable State law.

"(B) An individual shall be treated as actively engaged in seeking work during any week if—

"(i) the individual has engaged in a systematic and sustained effort to obtain work during such week, and

"(ii) the individual provides tangible evidence to the State agency that he has engaged in such an effort during such week.

"(5) Any agreement under subsection (a) shall provide that, in the administration of this Act, States shall make provision for referring applicants for benefits under this Act to any suitable work to which subparagraphs (A), (B), (C), and (D) of paragraph (3) would not apply.

* * * * *

"SEC. 104. [Financing provisions]. (a) [Use of extended unemployment compensation account funds; certification] (1) Funds in the extended unemployment compensation account (as established by section 905 of the Social Security Act) [section 1105 of Title 42, The Public Health and Welfare] of the Unemployment Trust Fund shall be used for the making of payments to States having agreements entered into under this Act.

* * * * *

"(b) [Authorization of appropriations; repayment of advances without interest]. There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, such sums as may be necessary to carry out the purposes of this Act. Amounts appropriated and paid to the States under section 103 with respect to weeks of unemployment ending prior to April 1, 1977, shall be repaid, without interest, as provided in section 905(d) of the Social Security Act [section 1105(d) of Title 42, The Public Health and Welfare].

"SEC. 105. (a) [Definitions]. For purposes of this Act—

"(1) the terms 'compensation', 'regular compensation', 'extended compensation', 'base period', 'benefit year', 'State', 'State agency', 'State law', and 'week' shall have the meanings assigned to them under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 [see Pub. L. 91-373, title II, § 205, set out as a note under this section in the main edition];

"(2) the term 'period of eligibility' means, in the case of any individual, the weeks in his benefit year which begin in an extended benefit period or an emergency benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such extended benefit period or in such emergency benefit period;

"(3) the term 'extended benefit period' shall have the meaning assigned to such term under section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 [see Pub. L. 91-373, title II, § 203, set out as a note under this section in the main edition];

"(4) the term 'additional eligibility period' means the thirteen-week period following the week in which an emergency benefit period ends in a State, as determined under section 102(c)(3); but no individual shall have an additional eligibility period unless there was payable to him in such State, for the week in which such emergency benefit period ended, either emergency compensation under this Act or extended compensation under the Federal-State Extended Unemployment Compensation Act of 1970 [see Pub. L. 91-373, title II, set out as a note under this section in the main edition];

"(5) the term 'rate of insured unemployment' means the percentage arrived at by dividing the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period (as determined on the basis of the reports made by the State agency to the Secretary) by the average monthly covered employment for the specified period;

"(6) the rate of insured unemployment for any thirteen-week period shall be determined by reference to the average monthly covered employment under the State law for the first four of the most recent six calendar quarters ending before the close of such period; and

"(7) determinations with respect to the rate of insured unemployment in a State shall be made by the State agency in accordance with regulations prescribed by the Secretary.

For purposes of any State law which refers to an extension under Federal law of the duration of benefits under the Federal-State Extended Unemployment Compensation Act of 1970 [see Pub. L. 91-373, title II, set out as a note under this section in the main edition], this Act shall be treated as amendatory of such Act.

"(b) [Recovery of overpayments]. (1) If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of emergency compensation under this Act to which he was not entitled, such individual—

"(A) shall be ineligible for further emergency compensation under this Act in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

"(B) shall be subject to prosecution under section 1001 of title 18, United States Code.

"(2)(A) In the case of individuals who have received amounts of emergency compensation under this Act to which they were not entitled, the State is authorized to require such individuals to repay the amounts of such emergency compensation to the State agency, except that the State agency may waive such repayment if it determines that—

"(i) the payment of such emergency compensation was without fault on the part of any such individual, and

"(ii) such repayment would be contrary to equity and good conscience.

"(B) The State agency may recover the amount to be repaid, or any part thereof, by deductions from any emergency compensation payable to such individual under this Act or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the three-year period after the date such individuals received the payment of the emergency compensation to which they were not entitled, except that no single deduction may exceed 50 per centum of the weekly benefit amount from which such deduction is made.

"(C) No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

"(3) Any determination by a State agency under paragraph (1) or (2) shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent."

Section 101(b) of Pub. L. 95-19 provided that: "The amendment made by subsection (a) [amending section 102(f)(2) of the Emergency Unemployment Compensation Act of 1974] shall apply to weeks of unemployment ending after March 31, 1977."

Section 102(d) of Pub. L. 95-19 provided that: "The amendments made by this section [amending sections 102(b)(2)(A)(ii), (B), (c)(3)(A)(ii), and (e) and 105(a) of the Emergency Unemployment Compensation Act of 1974] shall apply to weeks of unemployment ending after April 30, 1977. For purposes of determining an individual's entitlement to emergency compensation for weeks ending after April 30, 1977, there shall be taken into account any emergency compensation paid to such individual for weeks which end after the beginning of the individual's most recent benefit year and before May 1, 1977."

Section 103(b) of Pub. L. 95-19 provided that: "The amendment made by subsection (a) [amending section 104(b) of the Emergency Unemployment Compensation Act of 1974] shall be effective on April 1, 1977."

Section 104(b) of Pub. L. 95-19 provided that: "The amendment made by subsection (a) [enacting section 102(h) of the Emergency Unemployment Compensation Act of 1974] shall apply to weeks of unemployment beginning after the date of the enactment of this Act [Apr. 12, 1977]."

Section 105(b) of Pub. L. 95-19 provided that: "The amendment made by subsection (a) [enacting section 105(b) of the Emergency Unemployment Compensation Act of 1974] shall take effect on the date of the enactment of this Act [Apr. 12, 1977]."

Section 107(b) of Pub. L. 95-19 provided that: "The amendment made by subsection (a) [enacting provisions of section 102(b)(2) of the Emergency Unemployment Compensation Act of 1974 following subpar. (B) thereof] shall apply to weeks of unemployment ending after the date of enactment of this Act [Apr. 12, 1977]."

MODIFICATION OF AGREEMENTS WITH STATES TO REFLECT AMENDMENTS UNDER EMERGENCY UNEMPLOYMENT COMPENSATION EXTENSION ACT OF 1977

Section 106 of Pub. L. 95-19 provided that: "The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 12, 1977], propose to each State with which he has in effect an agreement under section 102 of the Emergency Unemployment Compensation Act of 1974 [set out as a note above] a modification of such agreement designed to provide for the payment of emergency compensation under such Act in accordance with the amendments made by this title [enacting sections 102(h) and 105(b) of the Emergency Unemployment Compensation Act of 1974, amending sections 102(b)(2), (c)(3)(A)(ii), (e), and (f)(2), 104(b), and 105(a) of that Act, and enacting provisions set out as notes under this section]. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposes such a modification of such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the last day of such 3-week period."

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Section 411 of Pub. L. 94-566, as amended Pub. L. 95-19, title III, § 303, Apr. 12, 1977, 91 Stat. 45, provided that:

* * * * *

"(f) Interim report.—The Commission shall transmit to the Congress not later than September 30, 1978, an interim report.

"(g) Final report.—The Commission shall transmit to the President and the Congress not later than July 1, 1979, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

* * * * *

FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970

Pub. L. 91-373, title II, Aug. 10, 1970, 84 Stat. 708, as amended by Pub. L. 92-599, title V, § 501, Oct. 27, 1972, 86 Stat. 1326; Pub. L. 93-53, § 5, July 1, 1973, 87 Stat. 137; Pub. L. 93-233, § 20, Dec. 31, 1973, 87 Stat. 974; Pub. L. 93-256, § 2, Mar. 28, 1974, 88 Stat. 52; Pub. L. 93-329, § 2, June 30, 1974, 88 Stat. 288; Pub. L. 93-368, § 3, Aug. 7, 1974, 88 Stat. 420; Pub. L. 93-572, §§ 106, 107, 108, Dec. 31, 1974, 88 Stat. 1872; Pub. L. 94-45, title I, § 102(b), June 30, 1975, 89 Stat. 238; Pub. L. 94-566, title I, § 116(d)(1), (2), title II, § 212(a), title III, § 311(a), (b), Oct. 20, 1976, 90 Stat. 2672, 2677, 2678, provided:

* * * * *

"Sec. 203. [Extended Benefit Period]

* * * * *

"(f) [Rate of Insured Unemployment; Covered Employment] (1) For purposes of subsections (d) and (e), the term 'rate of insured unemployment' means the percentage arrived at by dividing—

"(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies (or, in the case of subsection (e), by the State agency) to the Secretary, by

"(B) the average monthly covered employment for the specified period.

"(2) Determinations under subsection (d) shall be made by the Secretary in accordance with regulations prescribed by him.

"(3) Determinations under subsection (e) shall be made by the State agency in accordance with regulations prescribed by the Secretary.

* * * * *

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3302, 3303, 3305, 3309, 3310 of this title; title 19 section 2319; title 42 sections 602, 1103.

§ 3305. Applicability of State law

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

§ 3306. Definitions

[See main edition for text of (a)]

(b) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

[See main edition for text of (1) to (9)]

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

[*See main edition for text of (A) and (B)*]

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans); or

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

[*See main edition for text of (c) to (o)*]

(p) Concurrent employment by two or more employers

For purposes of sections 3301, 3302, and 3306(b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(As amended Dec. 20, 1977, Pub. L. 95–216, title III, § 314(b), 91 Stat. 1536; Oct. 17, 1978, Pub. L. 95–472, § 3(a), 92 Stat. 1333; Nov. 6, 1978, Pub. L. 95–600, title I, § 164(b)(2), 92 Stat. 2813.)

AMENDMENTS

1978—Subsec. (b)(12). Pub. L. 95–472 added subsec. (b)(12).

Subsec. (b)(13). Pub. L. 95–600 added subsec. (b)(13).

1977—Subsec. (p). Pub. L. 95–216 added subsec. (p).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(11) to (13) of this section by section 164(b)(2) of Pub. L. 95–600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95–600, set out as an Effective Date note under section 127 of this title.

Amendment of section by Pub. L. 95–472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95–472, set out as an Effective Date of 1978 Amendment note under section 3121 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Enactment of subsec. (p) of this section applicable with respect to wages paid after Dec. 31, 1978, see section 314(c) of Pub. L. 95–216 set out as an Effective Date of 1977 Amendment note under section 3121 of this title.

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95–427, set out as a note under section 62 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 51, 3301, 3305, 3309, 6157 of this title.

§§ 3307, 3308

COMMUTING EXPENSES

For application of these sections to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95–427, set out as a note under section 62 of this title.

§ 3309. State law coverage of services performed for nonprofit organizations or governmental entities

(a) State law requirements

For purposes of section 3304(a)(6)—

[*See main edition for text of (1)*]

(2) the State law shall provide that a governmental entity or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 95–19, title III, § 302(b), Apr. 12, 1977, 91 Stat. 44.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95–19 substituted "(or group of governmental entities or other organizations)" for "(or group of organizations)".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 302(d)(2) of Pub. L. 95–19 provided that: "The amendment made by subsection (b) [amending subsec. (a)(2) of this section] shall take effect as if included in the amendments made by section 506 of the Unemployment Compensation Amendments of 1976 [which amended subsec. (a)(2) of this section in 1976. See Effective Date of 1976 Amendment note below]."

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of catchline and subsecs. (a)(1)(B), (b)(3), and (b)(6) of this section and repeal of subsec. (d) of this section by Pub. L. 94–566 to be applicable with respect to certifications of States for 1978 and subsequent years, except that the amendment of subsecs. (a)(1)(B), (b)(3), and (b)(6) to be applicable only with respect to services performed after Dec. 31, 1977, and except that the repeal of subsec. (d) to be applicable with respect to weeks of unemployment which begin after Dec. 31, 1977, and, in the case of any State legislature which does not meet in a regular session which closes during the calendar year 1977, the repeal of subsec. (d) to be applicable only with respect to weeks of unemployment which begin after Dec. 31, 1978 (or if earlier, the date provided by State law), see section 115(d) of Pub. L. 94–566, set out as an Effective Date of 1976 Amendment note under section 3304 of this title.

Amendment of subsec. (a)(2) of this section by Pub. L. 94-566 to be applicable with respect to certifications of States for 1978 and subsequent years, but only with respect to services performed after Dec. 31, 1977, but, in the case of any State the legislature of which does not meet in a regular session which closes during the calendar year 1977, the amendment of subsec. (a)(2) by Pub. L. 94-566 to be applicable with respect to the certification of such State for 1979 and subsequent years, but only with respect to services performed after Dec. 31, 1978, see section 506(c) of Pub. L. 94-566, set out as an Effective Date of 1976 Amendment note under section 3304 of this title.

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

§ 3310. Judicial review

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 274, 3502, 3507, 6011, 6013, 6015, 6103, 6361, 6362, 6365, 6414, 6501, 6513, 6682, 7654 of this title; title 5 section 5901; title 42 section 2971g; title 48 section 1421i.

§ 3401. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include remuneration paid—

[See main edition for text of (1) to (15)]

(16)(A) as tips in any medium other than cash;

(B) as cash tips to an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(17) for service described in section 3121(b)(20); or

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 124.

(18) to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 913 (relating to deduction for certain expenses of living abroad).

[See main edition for text of (b) to (f)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, § 164(b)(1), 92 Stat. 2813; Nov. 8, 1978, Pub. L. 95-615, § 207(a), 92 Stat. 3108.)

CODIFICATION

A subsec. (a)(18) was added by Pub. L. 95-615 and by Pub. L. 95-600.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-615 added par. (18), set out second.

Pub. L. 95-600 added par. (18), set out first.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-615 applicable to remuneration paid after Nov. 8, 1978, but with taxpayers allowed to elect not to have the amendment apply with respect to any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, see section 209(b), (c) of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

Amendment of subsec. (a)(16) to (18) of this section by section 164(b)(1) of Pub. L. 95-600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 127 of this title.

CONTROVERSIES INVOLVING WHETHER INDIVIDUALS ARE EMPLOYEES FOR PURPOSES OF EMPLOYMENT TAXES

Section 530 of Pub. L. 95-600 provided that:

"(a) TERMINATION OF CERTAIN EMPLOYMENT TAX LIABILITY FOR PERIODS BEFORE 1980.—

"(1) IN GENERAL.—If—

"(A) for purposes of employment taxes, the taxpayer did not treat an individual as an employee for any period ending before January 1, 1980, and

"(B) in the case of periods after December 31, 1978, all Federal tax returns (including information returns) required to be filed by the taxpayer with respect to such individual for such period are filed on a basis consistent with the taxpayer's treatment of such individual as not being an employee,

then, for purposes of applying such taxes for such period with respect to the taxpayer, the individual shall be deemed not to be an employee unless the taxpayer had no reasonable basis for not treating such individual as an employee.

"(2) STATUTORY STANDARDS PROVIDING ONE METHOD OF SATISFYING THE REQUIREMENTS OF PARAGRAPH (1).—For purposes of paragraph (1), a taxpayer shall in any case be treated as having a reasonable basis for not treating an individual as an employee for a period if the taxpayer's treatment of such individual for such period was in reasonable reliance on any of the following:

"(A) judicial precedent, published rulings, technical advice with respect to the taxpayer, or a letter ruling to the taxpayer;

"(B) a past Internal Revenue Service audit of the taxpayer in which there was no assessment attributable to the treatment (for employment tax purposes) of the individuals holding positions substantially similar to the position held by this individual; or

"(C) long-standing recognized practice of a significant segment of the industry in which such individual was engaged.

"(3) CONSISTENCY REQUIRED IN THE CASE OF 1979 TAX TREATMENT.—Paragraph (1) shall not apply with respect to the treatment of any individual for employment tax purposes for any period ending after December 31, 1978, and before January 1, 1980, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for purposes of the employment taxes for any period beginning after December 31, 1977.

"(4) REFUND OR CREDIT OF OVERPAYMENT.—If refund or credit of any overpayment of an employment tax resulting from the application of paragraph (1) is not barred on the date of the enactment of this Act [Nov. 6, 1978] by any law or rule of law, the period for filing a claim for refund or credit of such overpayment (to the extent attributable to the application of paragraph (1)) shall not expire before the date 1 year after the date of the enactment of this Act [Nov. 6, 1978].

"(b) PROHIBITION AGAINST REGULATIONS AND RULINGS ON EMPLOYMENT STATUS.—No regulation or Revenue Ruling shall be published on or after the date of the enactment of this Act [Nov. 6, 1978] and before January 1, 1980 (or, if earlier, the effective date of any law hereafter enacted clarifying the employment status of individuals for purposes of the employment taxes) by the Department of the Treasury (including the Internal Revenue Service) with respect to the employment status of any individual for purposes of the employment taxes.

"(c) DEFINITIONS.—For purposes of this section—

"(1) EMPLOYMENT TAX.—The term 'employment tax' means any tax imposed by subtitle C of the Internal Revenue Code of 1954 [section 3101 et seq. of this title].

"(2) EMPLOYMENT STATUS.—The term 'employment status' means the status of an individual, under the usual common law rules applicable in determining the employer-employee relationship, as an employee or as an independent contractor (or other individual who is not an employee)."

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275, 3402, 3507, 6014, 6015, 6051, 6053, 6331, 6362 of this title.

§ 3402. Income tax collected at source

(a) Requirement of withholding

Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables prescribed by the Secretary. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978. For purposes of applying such tables, the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed, multiplied by the amount of one such exemption as shown in the table prescribed under subsection (b)(1).

(b) Percentage method of withholding

(1) The table referred to in subsection (a) is as follows:

Percentage Method Withholding Table

Payroll period	Amount of one withholding exemption
Weekly	$19.23
Biweekly	38.46
Semimonthly	41.66
Monthly	83.33
Quarterly	250.00
Semiannual	500.00
Annual	1,000.00
Daily or miscellaneous (per day of such period)	2.74

[See main edition for text of (2) to (5); (c) to (e)]

(f) Withholding exemptions

(1) In general

An employee receiving wages shall on any day be entitled to the following withholding exemptions:

[See main edition for text of (A) to (F)]

(G) a zero bracket allowance which shall be an amount equal to one exemption unless (i) he is married (as determined under section 143) and his spouse is an employee receiving wages subject to withholding or (ii) he has withholding exemption certificates in effect with respect to more than one employer.

For purposes of this title, any zero bracket allowance under subparagraph (G) shall be treated as if it were denominated a withholding exemption.

[See main edition for text of (2) to (7); (g) to (l)]

(m) Withholding allowances based on itemized deductions

(1) General rule

An employee shall be entitled to withholding allowances under this subsection with respect to a payment of wages in a number equal to the number determined by dividing by $1,000 the excess of—

(A) his estimated itemized deductions, over

(B) an amount equal to $3,400 ($2,300 in the case of an individual who is not married (within the meaning of section 143) and who is not a surviving spouse (as defined in section 2(a))).

For purposes of this subsection a fraction number shall not be taken into account unless it amounts to one-half or more, in which case it shall be increased to 1.

(2) Definitions

For the purposes of this subsection—

(A) Estimated itemized deductions

The term "estimated itemized deductions" means the aggregate amount which he reasonably expects will be allowable as deductions under chapter 1 (other than the deductions referred to in section 151 and other than the deductions required to be taken into account in determining adjusted gross income under section 62 (other than paragraph (13) thereof)) for the estimation year. In no case shall such aggregate

amount be greater than the sum of (i) the amount of such deductions (or the zero bracket amount (within the meaning of section 63(d)) reflected in his return of tax under subtitle A for the taxable year preceding the estimation year or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year, and (ii) the amount of his determinable additional deductions for the estimation year.

(B) Estimated wages

The term "estimated wages" means the aggregate amount which he reasonably expects will constitute wages for the estimation year.

(C) Determinable additional deductions

The term "determinable additional deductions" means those estimated itemized deductions which (i) are in excess of the deductions referred to in subparagraph (A) (or the zero bracket amount) reflected on his return of tax under subtitle A for the taxable year preceding the estimation year, and (ii) are demonstrably attributable to an identifiable event during the estimation year or the preceding taxable year which can reasonably be expected to cause an increase in the amount of such deductions on the return of tax under subtitle A for the estimation year.

[*See main edition for text of (D), (3) and (4); (n) to (p)*]

(q) Extension of withholding to certain gambling winnings

[*See main edition for text of (1) and (2)*]

(3) Winnings which are subject to withholding

For purposes of this subsection, the term "winnings which are subject to withholding" means proceeds from a wager determined in accordance with the following:

[*See main edition for text of (A) and (B)*]

(C) Sweepstakes, wagering pools, certain parimutuel pools, jai alai, and lotteries

Proceeds of more than $1,000 from—

(i) a wager placed in a sweepstakes, wagering pool, or lottery (other than a wager described in subparagraph (B)), or

(ii) a wagering transaction in a parimutuel pool with respect to horse races, dog races, or jai alai if the amount of such proceeds is at least 300 times as large as the amount wagered.

[*See main edition for text of (4) to (7)*]

(r) Extension of withholding to GSOC distributions

(1) General rule

An electing GSOC making any distribution to its shareholders shall deduct and withhold from such payment a tax in an amount equal to 25 percent of such payment.

(2) Coordination with other sections

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7205) as relates to this chapter, distributions of an electing GSOC to any shareholder which are subject to withholding shall be treated as if they were wages paid by an employer to an employee.

(As amended May 23, 1977, Pub. L. 95–30, title I, § 105, title IV, § 405(a), 91 Stat. 140, 156; Nov. 6, 1978, Pub. L. 95–600, title I, §§ 101(e), 102(c), title VI, § 601(b)(2), 92 Stat. 2770, 2771, 2896.)

REFERENCES IN TEXT

Sections 101 and 102 of the Tax Reduction and Simplification Act of 1977, referred to in subsec. (a), is Pub. L. 95–30, §§ 101, 102, May 23, 1977, 91 Stat. 127, which amended sections 1, 3, 21, 42, 57, 63, 143, 161, 172, 211, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 6014, 6212, 6504, and 6654 of this title and repealed sections 36, 141, 142, 144, and 145 of this title.

Section 101 of the Revenue Act of 1978, referred to in subsec. (a), is Pub. L. 95–600, title I, § 101, Nov. 6, 1978, 92 Stat. 2767, which amended this section and sections 1, 63, 402, 1302, 3402, and 6012 of this title and enacted provisions set out as notes under sections 1 and 3402 of this title.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–600, § 101(e)(1), substituted "With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977 and the amendments made by section 101 of the Revenue Act of 1978." for "With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977.".

Subsec. (b)(1). Pub. L. 95–600, § 102(c)(1), increased the amounts set out in the table for one withholding exemption for each of the payroll period categories from $14.40, $28.80, $31.30, $62.50, $187.50, $375.00, $750.00 and $2.10 to $19.23, $38.46, $41.66, $83.33, $250.00, $500.00, $1,000.00 and $2.74, respectively.

Subsec. (m)(1). Pub. L. 95–600, §§ 101(e)(2), 102(c)(2), substituted "$1,000" for "$750", "$3,400" for "$3,200" and "$2,300" for "$2,200".

Subsec. (r). Pub. L. 95–600, § 601(b)(2), added subsec. (r).

1977—Subsec. (a). Pub. L. 95–30, § 105(a), substituted "With respect to wages paid after May 31, 1977, and before January 1, 1979, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1976; except that such tables shall be modified to the extent necessary so that, had they been in effect for all of 1977, they would reflect the full year effect of the amendments made by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977. With respect to wages paid after December 31, 1978, the tables so prescribed shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made

by sections 101 and 102 of the Tax Reduction and Simplification Act of 1977" for "With respect to wages paid prior to January 1, 1978, the tables so prescribed shall be the same as the tables prescribed under this section which were in effect on January 1, 1976. With respect to wages paid after December 31, 1977, the Secretary shall prescribe new tables which shall be the same as the tables prescribed under this subsection which were in effect on January 1, 1975, except that such tables shall be modified to the extent necessary to reflect the amendments made to subsections (b) and (c) of section 141 by the Tax Reform Act of 1976".

Subsec. (f)(1). Pub. L. 95-30, § 105(b)(1), substituted "zero bracket" for "standard deduction" in subpar. (G) and in the provisions following subpar. (G).

Subsec. (m)(1)(B). Pub. L. 95-30, § 105(b)(2), substituted "an amount equal to $3,200 ($2,200" for "an amount equal to the lesser of (i) 16 percent of his estimated wages, or (ii) $2,800 ($2,400".

Subsec. (m)(2)(A). Pub. L. 95-30, § 105(b)(3)(A), (B), substituted "section 151" for "sections 141 and 151" and "(or the zero bracket amount (within the meaning of section 63(d)))" for "(or the amount of the standard deduction)".

Subsec. (m)(2)(C). Pub. L. 95-30, § 105(b)(3)(C), substituted "(or the zero bracket amount)" for "(or the standard deduction)".

Subsec. (q)(3)(C). Pub. L. 95-30, § 405(a), inserted reference to certain parimutuel pools and jai alai in the catchline and, in text, designated existing provisions as cl. (i) and added cl. (ii).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 101(f)(2) of Pub. L. 95-600 provided that: "The amendments made by subsection (e) [amending subsecs. (a) and (m)(1)(B) of this section] shall apply to remuneration paid after December 31, 1978."

Section 102(d)(2) of Pub. L. 95-600 provided that: "The amendments made by subsection (c) [amending subsecs. (b)(1) and (m)(1) of this section] shall apply with respect to remuneration paid after December 31, 1978."

Amendment by section 601(b)(2) of Pub. L. 95-600 [adding subsec. (r)] applicable with respect to corporations chartered after Dec. 31, 1978, and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as an Effective Date note under section 1391 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106(b) of Pub. L. 95-30 provided that: "The amendments made by section 105 [amending subsecs. (a), (f)(1), and (m) of this section] shall apply to wages paid after April 30, 1977."

Section 405(b) of Pub. L. 95-30 provided that: "The amendments made by this section [amending subsec. (q)(3)(C) of this section] apply to payments made after April 30, 1977."

COMMUTING EXPENSES

For application of this section to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

FAILURE TO DEDUCT AND WITHHOLD UNDER A DUTY CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Section 304 of Pub. L. 95-30 provided that: "No person shall be liable in respect of any failure to deduct and withhold under section 3402 of the Internal Revenue Code of 1954 [this section] (relating to income tax collected at source) on remuneration paid before January 1, 1977, to the extent that the duty to deduct and withhold was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94-455]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 3401, 3505, 3507, 6040, 6051, 6205, 6413, 6682, 7205 of this title; title 42 section 662.

§§ 3403, 3404

COMMUTING EXPENSES

For application of these sections to transportation expenses in traveling between a taxpayer's residence and place of work, with respect to transportation costs paid or incurred after Dec. 31, 1976 and on or before Dec. 31, 1979, see section 2 of Pub. L. 95-427, set out as a note under section 62 of this title.

CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.

3506. Individuals providing companion sitting placement services.
3507. Advance payment of earned income credit.

AMENDMENTS

1978—Pub. L. 95-600, title I, § 105(b)(2), Nov. 6, 1978, 92 Stat. 2776, added item 3507.

1977—Pub. L. 95-171, § 10(b), Nov. 12, 1977, 91 Stat. 1356, added item 3506.

§ 3506. Individuals providing companion sitting placement services

(a) In general

For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

(b) Definitions

For purposes of this section, the term "sitters" means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

(Added Pub. L. 95-171, § 10(a), Nov. 12, 1977, 91 Stat. 1356.)

EFFECTIVE DATE

Section 10(c) of Pub. L. 95-171 provided that: "The amendments made by this section [enacting this section and provision set out as a note under this section] shall apply to remuneration received after December 31, 1974."

UNEMPLOYMENT COMPENSATION OR SOCIAL SECURITY BENEFITS BASED ON SERVICES PERFORMED BEFORE NOVEMBER 12, 1977, UNAFFECTED

Section 10(d) of Pub. L. 95-171 provided that: "The amendments made by this section [enacting this section] shall not be construed as affecting (1) any individual's right to receive unemployment compensation based on services performed before the date of the enactment of this Act [Nov. 12, 1977], or (2) any individual's eligibility for social security benefits to the extent based on services performed before that date [Nov. 12, 1977]."

§ 3507. Advance payment of earned income credit

(a) General rule

Except as otherwise provided in this section, every employer making payment of wages to an employee with respect to whom an earned income eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment to such employee equal to such employee's earned income advance amount.

(b) Earned income eligibility certificate

For purposes of this title, an earned income eligibility certificate is a statement furnished by an employee to the employer which—

(1) certifies that the employee will be eligible to receive the credit provided by section 43 for the taxable year,

(2) certifies that the employee does not have an earned income eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer, and

(3) states whether or not the employee's spouse has an earned income eligibility certificate in effect.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

(c) Earned income advance amount

(1) In general

For purposes of this title, the term "earned income advance amount" means, with respect to any payroll period, the amount determined—

(A) on the basis of the employee's wages from the employer for such period, and

(B) in accordance with tables prescribed by the Secretary.

(2) Advance amount tables

The tables referred to in paragraph (1)(B)—

(A) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables, and

(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

(i) of not more than 10 percent of the first $5,000 of earned income, which

(ii) phases out between $6,000 and $10,000 of earned income, or

(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

(i) of not more than 10 percent of the first $2,500 of earned income, which

(ii) phases out between $3,000 and $5,000 of earned income.

(d) Payments to be treated as payments of withholding and FICA taxes

(1) In general

For purposes of this title, payments made by an employer under subsection (a) to his employees for any payroll period—

(A) shall not be treated as the payment of compensation, and

(B) shall be treated as made out of—

(i) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding), and

(ii) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

(iii) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes),

as if the employer had paid to the Secretary, on the day on which the wages are paid to the employees, an amount equal to such payments.

(2) Advance payments exceed taxes due

In the case of any employer, if for any payroll period the aggregate amount of earned income advance payments exceeds the sum of the amounts referred to in paragraph (1)(B), each such advance payment shall be reduced by an amount which bears the same ratio to such excess as such advance payment bears to the aggregate amount of all such advance payments.

(3) Employer may make full advance payments

The Secretary shall prescribe regulations under which an employer may elect (in lieu of any application of paragraph (2))—

(A) to pay in full all earned income advance amounts, and

(B) to have additional amounts paid by reason of this paragraph treated as the advance payment of taxes imposed by this title.

(4) Failure to make advance payments

For purposes of this title (including penalties), failure to make any advance payment under this section at the time provided therefor shall be treated as the failure at such time to deduct and withhold under chapter 24 an amount equal to the amount of such advance payment.

(e) Furnishing and taking effect of certificates

For purposes of this section—

(1) When certificate takes effect

(A) First certificate furnished

An earned income eligibility certificate furnished the employer in cases in which no previous such certificate had been in effect for the calendar year shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished (or if later, the first day of the calendar year for which furnished).

(B) Later certificate

An earned income eligibility certificate furnished the employer in cases in which a

previous such certificate had been in effect for the calendar year shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished. For purposes of this section, the term "status determination date" means January 1, May 1, July 1, and October 1 of each year.

(2) Period during which certificate remains in effect

An earned income eligibility certificate which takes effect under this section for any calendar year shall continue in effect with respect to the employee during such calendar year until revoked by the employee or until another such certificate takes effect under this section.

(3) Change of status

(A) Requirement to revoke or furnish new certificate

If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of—

(i) making the employee ineligible for the credit provided by section 43 for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee,

the employee shall, within 10 days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by paragraph (1)(B) for a later certificate and shall be made in such form as the Secretary shall by regulations prescribe.

(B) Certificate no longer in effect

If, after an employee has furnished an earned income eligibility certificate under this section which certifies that such a certificate is in effect with respect to the spouse of the employee, such a certificate is no longer in effect with respect to such spouse, then the employee may furnish the employer with a new earned income eligibility certificate.

(4) Form and contents of certificate

Earned income eligibility certificates shall be in such form and contain such other information as the Secretary may by regulations prescribe.

(5) Taxable year defined

The term "taxable year" means the last taxable year of the employee under subtitle A beginning in the calendar year in which the wages are paid.

(Added Pub. L. 95-600, title I, § 105(b)(1), Nov. 6, 1978, 92 Stat. 2773.)

EFFECTIVE DATE

Section 105(g)(2) of Pub. L. 95-600 provided that: "The amendments made by subsections (b), (c), and (e) [enacting this section, and amending sections 6051(a)(5) to (7) and 6302(d) of this title] shall apply to remuneration paid after June 30, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43, 6012, 6051, 6302 of this title.

Subtitle D—Miscellaneous Excise Taxes

Chap. Sec.[1]
42. Private foundations, black lung benefit trusts 4940

AMENDMENTS

1978—Pub. L. 95-227, § 4(c)(2)(C), Feb. 10, 1978, 92 Stat. 22, in Chapter 42 heading added ", black lung benefit trusts" following "foundations".

CHAPTER 31—SPECIAL FUELS

Sec.
4042. Tax on fuel used in commercial transportation on inland waterways.

AMENDMENTS

1978—Pub. L. 95-502, title II, § 202(c), Oct. 21, 1978, 92 Stat. 1697, added item 4042.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6103, 6416, 7261 of this title.

§ 4041. Imposition of tax

[*See main edition for text of* (a)]

(b) Special motor fuels

There is hereby imposed a tax of 4 cents a gallon upon benzol, benzene, naphtha, liquefied petroleum gas, casinghead and natural gasoline, or any other liquid (other than kerosene, gas oil, or fuel oil, or any product taxable under section 4081 or subsection (a) of this section)—

[*See main edition for text of* (1) *and* (2)]

In the case of a liquid taxable under this subsection sold for use, or used, in a qualified business use, the tax imposed by paragraph (1) or by paragraph (2) shall be 2 cents a gallon. If a liquid on which tax was imposed by paragraph (1) at the rate of 2 cents a gallon by reason of the preceding sentence is used otherwise than in a qualified business use, a tax of 2 cents a gallon shall be imposed under paragraph (2). For purposes of this subsection, the term "qualified business use" has the meaning given to such term by section 6421(d)(2).

(c) Noncommercial aviation

[*See main edition for text of* (1) *and* (2)]

(3) Rate of tax

The rate of tax imposed by paragraph (2) is 3 cents a gallon.

[*See main edition for text of* (4) *and* (5); (d)]

(e) Rate reduction

On and after October 1, 1984—

(1) the taxes imposed by subsections (a) and (b) shall be 1⅛ cents a gallon, and

[1] Sections editorially added for convenience of readers.

(2) the second and third sentences of subsections (a) and (b) shall not apply.

[See main edition for text of (f) and (g)]

(h) Exemption for use by certain aircraft museums

[See main edition for text of (1)]

(2) Definition of aircraft museum

For purposes of this subsection, the term "aircraft museum" means an organization—

[See main edition for text of (A) to (C)]

(i) Registration

If any liquid is sold by any person for use as a fuel in an aircraft, it shall be presumed for purposes of this section that a tax imposed by this section applies to the sale of such liquid unless the purchaser is registered in such manner (and furnished such information in respect of the use of the liquid) as the Secretary shall by regulations provide.

(j) Sales by United States, etc.

The taxes imposed by this section shall apply with respect to liquids sold at retail by the United States, or by any agency or instrumentality of the United States, unless sales by such agency or instrumentality are by statute specifically exempted from such taxes.

(k) Fuels containing alcohol

(1) In general

Under regulations prescribed by the Secretary, no tax shall be imposed by this section on the sale or use of any liquid fuel at least 10 percent of which consists of alcohol (as defined by section 4081(c)(3)).

(2) Later separation

If any person separates the liquid fuel from a mixture of the liquid fuel and alcohol on which tax was not imposed by reason of this subsection, such separation shall be treated as a sale of the liquid fuel.

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(1), (b), 92 Stat. 2756, 2757; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(*l*)(1), (2), 92 Stat. 2942; Nov. 9, 1978, Pub. L. 95-618, title II, §§ 221(b)(1), 222(a)(2), 233(a)(3)(B), 92 Stat. 3185, 3187, 3191.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-618, §§ 222(a)(2), 233(a)(3)(B), substituted ", in a qualified business use" for "otherwise than as a fuel in a highway vehicle (A) which (at the time of such sale or use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway" and "is used otherwise than in a qualified business use" for "is used as a fuel in a highway vehicle (A) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (B) which, in the case of a highway vehicle owned by the United States, is used on the highway" and added provision that for purposes of this subsection, the term "qualified business use" has the meaning given to such term by section 6421(d)(2).

Subsec. (c)(3). Pub. L. 95-599, § 502(b), struck out termination date of Sept. 30, 1979 for the 3 cents per gallon rate of tax and struck out provision for a 5½ cents per gallon rate of tax after such date.

Subsec. (e). Pub. L. 95-599, § 502(a)(1), substituted "1984" for "1979".

Subsec. (h)(2). Pub. L. 95-600, § 703(*l*)(1), substituted "term 'aircraft museum' means" for "term 'aircraft' means".

Subsec. (j). Pub. L. 95-600, § 703(*l*)(2), redesignated former subsec. (i), relating to sales by the United States, or by any agency or instrumentality of the United States, as (j).

Subsec. (k). Pub. L. 95-618, § 221(b)(1), added subsec. (k).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 222(b) of Pub. L. 95-618 provided that: "The amendments made by subsection (a) [adding provision in subsec. (b) relating to qualified business use as defined by section 6421(d)(3) and amending sections 6421 and 6424 of this title] shall apply with respect to uses after December 31, 1978."

Amendment of subsec. (b) of this section by section 233(a)(3)(B) of Pub. L. 95-618 substituting "6421(d)(2)" for "6421(d)(3)" effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as an effective Date of 1978 Amendment note under section 39 of this title.

Amendment of subsec. (h)(2), (j) by section 703(*l*)(1), (2) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 221(b)(2) of Pub. L. 95-618 provided that: "The amendment made by paragraph (1) [adding subsec. (k) of this section] shall apply to sales or use after December 31, 1978, and before October 1, 1984."

REPORTS ON USE OF ALCOHOL IN FUEL

Section 221(c) of Pub. L. 95-618 provided that:

"(1) ANNUAL REPORT.—On April 1 of each year, beginning with April 1, 1980, and ending on April 1, 1984, the Secretary of Energy, in consultation with the Secretary of the Treasury and the Secretary of Transportation, shall submit to the Congress a report on the use of alcohol in fuel. The report shall include—

"(A) a description of the firms engaged in the alcohol fuel industry,

"(B) the amount of alcohol fuels sold in each State, and the amount of gasoline saved in each State by reason of the use of alcohol fuels.

"(C) the revenue loss resulting from the exemptions from tax for alcohol fuels under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1954 and

"(D) the cost of production and the retail cost of alcohol fuels as compared to gasoline and special fuels before the imposition of any Federal excise taxes.

"(2) REPORT.—The report submitted to the Congress on April 1, 1984, shall contain, in addition to the information required under paragraph (1), an analysis of the effect on the alcohol fuel industry of the termination of the exemption from excise taxes provided under sections 4041(k) and 4081(c) of the Internal Revenue Code of 1954."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4082, 4293, 6206, 6416, 6420, 6421, 6427 of this title; title 49 section 1742.

§ 4042. Tax on fuel used in commercial transportation on inland waterways

(a) In general

There is hereby imposed a tax on any liquid used during any calendar quarter by any person as a fuel in a vessel in commercial waterway transportation.

(b) Amount of tax

The tax imposed by subsection (a) shall be determined from the following table:

If the use occurs—	The tax is—
After September 30, 1980 and before October 1, 1981	4 cents a gallon
After September 30, 1981 and before October 1, 1983	6 cents a gallon
After September 30, 1983 and before October 1, 1985	8 cents a gallon
After September 30, 1985	10 cents a gallon

(c) Exemptions

(1) Deep-draft ocean-going vessels

The tax imposed by subsection (a) shall not apply with respect to any vessel designed primarily for use on the high seas which has a draft of more than 12 feet.

(2) Passenger vessels

The tax imposed by subsection (a) shall not apply with respect to any vessel used primarily for the transportation of persons.

(3) Use by state or local government in transporting property in a state or local business

Subparagraph (B) of subsection (d)(1) shall not apply with respect to use by a State or political subdivision thereof.

(4) Use in moving lash and seabee ocean-going barges

The tax imposed by subsection (a) shall not apply with respect to use for movement by tug of exclusively LASH (Lighter-aboard-ship) and SEABEE ocean-going barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

(d) Definitions

For purposes of this section—

(1) Commercial waterway transportation

The term "commercial waterway transportation" means any use of a vessel on any inland or intracoastal waterway of the United States—

(A) in the business of transporting property for compensation or hire, or

(B) in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

(2) Inland or intracoastal waterway of the United States

The term "inland or intracoastal waterway of the United States" means any inland or intracoastal waterway of the United States which is described in section 206 of the Inland Waterways Revenue Act of 1978.

(3) Person

The term "person" includes the United States, a State, a political subdivision of a State, or any agency or instrumentality of any of the foregoing.

(e) Date for filing return

The date for filing the return of the tax imposed by this section for any calendar quarter shall be the last day of the first month following such quarter.

(Added Pub. L. 95-502, title II, § 202(a), Oct. 21, 1978, 92 Stat. 1696.)

REFERENCES IN TEXT

Section 206 of the Inland Waterways Revenue Act of 1978, referred to in subsec. (d)(2), is section 206 of Pub. L. 95-502, title II, Oct. 21, 1978, 92 Stat. 1700, which is classified to section 1804 of Title 33, Navigation and Navigable Waters.

PRIOR PROVISIONS

A prior section 4042, act Aug. 16, 1954, ch. 736, 68A Stat. 478, which provided a cross reference to section 4222 of this title for exemption from tax where special motor fuels are sold for use for certain vessels, was repealed by Pub. L. 94-455, title XIX, § 1904(a)(1)(D), Oct. 4, 1976, 90 Stat. 1811.

EFFECTIVE DATE

Section 202(d) of Pub. L. 95-502 provided that: "The amendments made by this section [enacting this section and amending section 4293 of this title] shall take effect on October 1, 1980."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 33 section 1801, 1804.

CHAPTER 32—MANUFACTURERS EXCISE TAXES

Subchapter		Sec.[1]
B.	Coal	4121

AMENDMENTS

1978—Pub. L. 95-227, § 2(c), Feb. 10, 1978, 92 Stat. 12, added Subchapter B heading.

Subchapter A—Automotive and Related Items

PART I—MOTOR VEHICLES

Sec.
4064. Gas guzzler tax.

AMENDMENTS

1978—Pub. L. 95-618, title II, § 201(f), Nov. 9, 1978, 92 Stat. 3184, added item 4064.

§ 4061. Imposition of tax

(a) Trucks, buses, tractors, etc.

(1) Tax imposed

There is hereby imposed upon the following articles (including in each case parts or accessories therefor sold on or in connection therewith or with the sale thereof) sold by the manufacturer, producer, or importer a tax of 10 percent of the price for which so sold, except that on and after October 1, 1984, the rate shall be 5 percent—

Automobile truck chassis.
Automobile truck bodies.
Automobile bus chassis.
Automobile bus bodies.
Truck and bus trailer and semitrailer chassis.
Truck and bus trailer and semitrailer bodies.
Tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

A sale of an automobile truck, bus, truck or bus trailer or semitrailer shall, for the purposes of this subsection, be considered to be a

[1] Section numbers editorially added for convenience of users.

sale of a chassis and of a body enumerated in this subsection.

[See main edition for text of (2)]

(b) Parts and accessories

(1) Except as provided in paragraph (2), there is hereby imposed upon parts or accessories (other than tires and inner tubes) for any of the articles enumerated in subsection (a)(1) sold by the manufacturer, producer, or importer a tax equivalent to 8 percent of the price for which so sold, except that on and after October 1, 1984, the rate shall be 5 percent.

[See main edition for text of (2)]

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(2), (3), 92 Stat. 2756.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-599, § 502(a)(2), substituted "1984" for "1979".

Subsec. (b)(1). Pub. L. 95-599, § 502(a)(3), substituted "1984" for "1979".

§ 4063. Exemptions

(a) Specified articles

[See main edition for text of (1) to (5)]

(5) Buses

The tax imposed under section 4061(a) shall not apply in the case of any automobile bus chassis or automobile bus body.

[See main edition for text of (7); (b) to (d)]

(e) Parts for light-duty trucks

The tax imposed by section 4061(b) shall not apply to the sale by the manufacturer, producer, or importer of any article which is to be resold by the purchaser on or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), or which is to be resold by the purchaser to a second purchaser for resale by such second purchaser on or in connection with the first retail sale of a light-duty truck.

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(ff)(1), 92 Stat. 2924; Nov. 9, 1978, Pub. L. 95-618, title II, § 231(a), 92 Stat. 3187.)

AMENDMENTS

1978—Subsec. (a)(6). Pub. L. 95-618 in par. heading substituted "Buses" for "Local transit buses" and in text struck out "which are to be used predominantly by the purchaser in mass transportation service in urban areas" following "bus bodies".

Subsec. (e). Pub. L. 95-600 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 231(g) of Pub. L. 95-618 provided that:

"(1) The amendments made by subsections (a) and (f) [amending sections 4063, 4222 and 6412 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Nov. 9, 1978].

"(2) For purposes of paragraph (1), an article shall not be considered sold on or before the date of the enactment of this Act [Nov. 9, 1978] unless possession or right to possession passes to the purchaser on or before such date.

"(3) In the case of—

"(A) a lease,

"(B) a contract for the sale of an article providing that the price shall be paid by installments and title to the article sold does not pass until a future date notwithstanding partial payment by installments,

"(C) a conditional sale, or

"(D) a chattel mortgage arrangement providing that the sale price shall be paid in installments,

entered into on or before the date of the enactment of this Act [Nov. 9, 1978], payments made after such date with respect to the article leased or sold shall, for purposes of this subsection, be considered as payments made with respect to an article sold after such date, if the lessor or vendor establishes that the amount of payments payable after such date with respect to such article has been reduced by an amount equal to that portion of the tax applicable with respect to the lease or sale of such article which is due and payable after such date. If the lessor or vendor does not establish that the payments have been so reduced, they shall be treated as payments made in respect of an article sold on or before the date of the enactment of this Act [Nov. 9, 1978]."

Section 701(ff)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [adding subsec. (e) of this section and amending sections 4221(c) and 4222(d) of this title] shall take effect on the first day of the first calendar month beginning more than 20 days after the date of the enactment of this Act [Nov. 6, 1978]."

BUSES

Section 231(b) to (e) of Pub. L. 95-618 provided that:

"(b) FLOOR STOCKS REFUNDS.—

"(1) IN GENERAL.—Where, before the day after the date of the enactment of this Act [Nov. 9, 1978], any tax-repealed article (as defined in subsection (e)) has been sold by the manufacturer, producer, or importer and on such day is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article, if—

"(A) claim for such credit or refund is filed with the Secretary of the Treasury before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act [Nov. 9, 1978] based upon a request submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the dealer who held the article in respect of which the credit or refunds [*sic*] is claimed; and

"(B) on or before the first day of such 10th calendar month reimbursement has been made to the dealer by the manufacturer, producer, or importer in an amount equal to the tax paid on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

"(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary of the Treasury under this subsection.

"(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061(a) of the Internal Revenue Code of 1954 shall, insofar as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

"(c) REFUNDS WITH RESPECT TO CERTAIN CONSUMER PURCHASES.—

"(1) IN GENERAL.—Except as otherwise provided in paragraph (2), where on or after April 20, 1977, and

on or before the date of the enactment of this Act [Nov. 9, 1978], a tax-repealed article (as defined in subsection (e)) has been sold to an ultimate purchaser, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer of such article an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article.

"(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to a credit or refund under paragraph (1) with respect to an article unless—

"(A) he has in his possession such evidence of the sale of the article to an ultimate purchaser, and of the reimbursement of the tax to such purchaser, as may be required by regulations prescribed by the Secretary of the Treasury under this subsection;

"(B) claim for such credit or refund is filed with the Secretary of the Treasury before the first day of the 10th calendar month beginning after the day after the date of the enactment of this Act [Nov. 9, 1978] based upon information submitted to the manufacturer, producer, or importer before the first day of the 7th calendar month beginning after the day after the date of the enactment of this Act by the person who sold the article (in respect of which the credit or refund is claimed) to the ultimate purchaser; and

"(C) on or before the first day of such 10th calendar month reimbursement has been made to the ultimate purchaser in an amount equal to the tax paid on the article.

"(3) OTHER LAWS APPLICABLE.—All provisions of laws, including penalties, applicable with respect to the taxes imposed by section 4061(a) of such Code shall, insofar as applicable and not inconsistent with paragraph (1) or (2) of this subsection, apply with respect to the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayment of the tax.

"(d) CERTAIN USES BY MANUFACTURER, ETC.—Any tax paid by reason of section 4218(a) of such Code (relating to use by manufacturer or importer considered sale) on any tax-repealed article shall be deemed an overpayment of such tax if the tax was imposed on such article by reason of such section 4218(a) on or after April 20, 1977.

"(e) DEFINITIONS.—For purposes of this section—

"(1) The term 'dealer' includes a wholesaler, jobber, distributor, or retailer.

"(2) An article shall be considered as 'held by a dealer' if title thereto has passed to such dealer (whether or not delivery to him has been made) and if, for purposes of consumption, title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

"(3) The term 'tax-repealed article' means an article on which a tax was imposed by section 4061(a) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 9, 1978]) and which is exempted from such tax by paragraph (6) of section 4063(a) of such Code (as amended by subsection (a) of this section)."

§ 4064. Gas guzzler tax

(a) Imposition of tax

There is hereby imposed on the sale by the manufacturer of each automobile a tax determined in accordance with the following tables:

(1) In the case of a 1980 model year automobile:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 15	0
At least 14 but less than 15	$200
At least 13 but less than 14	300
Less than 13	550

(2) In the case of a 1981 model year automobile:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 17	0
At least 16 but less than 17	$200
At least 15 but less than 16	350
At least 14 but less than 15	450
At least 13 but less than 14	550
Less than 13	650

(3) In the case of a 1982 model year automobile:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 18.5	0
At least 17.5 but less than 18.5	$200
At least 16.5 but less than 17.5	350
At least 15.5 but less than 16.5	450
At least 14.5 but less than 15.5	600
At least 13.5 but less than 14.5	750
At least 12.5 but less than 13.5	950
Less than 12.5	1,200

(4) In the case of a 1983 model year automobile:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 19	0
At least 18 but less than 19	$350
At least 17 but less than 18	500
At least 16 but less than 17	650
At least 15 but less than 16	800
At least 14 but less than 15	1,000
At least 13 but less than 14	1,250
Less than 13	1,550

(5) In the case of a 1984 model year automobile:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 19.5	0
At least 18.5 but less than 19.5	$450
At least 17.5 but less than 18.5	600
At least 16.5 but less than 17.5	750
At least 15.5 but less than 16.5	950
At least 14.5 but less than 15.5	1,150
At least 13.5 but less than 14.5	1,450
At least 12.5 but less than 13.5	1,750
Less than 12.5	2,150

(6) In the case of a 1985 model year automobile:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 21	0
At least 20 but less than 21	$500
At least 19 but less than 20	600
At least 18 but less than 19	800
At least 17 but less than 18	1,000
At least 16 but less than 17	1,200
At least 15 but less than 16	1,500
At least 14 but less than 15	1,800
At least 13 but less than 14	2,200
Less than 13	2,650

(7) In the case of a 1986 or later model year automobile:

If the fuel economy of the model type in which the automobile falls is:	The tax is:
At least 22.5	0
At least 21.5 but less than 22.5	$500
At least 20.5 but less than 21.5	650

At least 19.5 but less than 20.5	850
At least 18.5 but less than 19.5	1,050
At least 17.5 but less than 18.5	1,300
At least 16.5 but less than 17.5	1,500
At least 15.5 but less than 16.5	1,850
At least 14.5 but less than 15.5	2,250
At least 13.5 but less than 14.5	2,700
At least 12.5 but less than 13.5	3,200
Less than 12.5	3,850

(b) Definitions

For purposes of this section—

(1) Automobile

(A) In general

The term "automobile" means any 4-wheeled vehicle propelled by fuel—

(i) which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and

(ii) which is rated at 6,000 pounds gross vehicle weight or less.

(B) Exception for certain vehicles

The term "automobile" does not include any vehicle which is treated as a nonpassenger automobile under the rules which were prescribed by the Secretary of Transportation for purposes of section 501 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2001) and which were in effect on the date of the enactment of this section.

(C) Exception for emergency vehicles

The term "automobile" does not include any vehicle sold for use and used—

(i) as an ambulance or combination ambulance-hearse,

(ii) by the United States or by a State or local government for police or other law enforcement purposes, or

(iii) for other emergency uses prescribed by the Secretary by regulations.

(2) Fuel economy

The term "fuel economy" means the average number of miles traveled by an automobile per gallon of gasoline (or equivalent amount of other fuel) consumed, as determined by the EPA Administrator in accordance with procedures established under subsection (c).

(3) Model type

The term "model type" means a particular class of automobile as determined by regulation by the EPA Administrator.

(4) Model year

The term "model year", with reference to any specific calendar year, means a manufacturer's annual production period (as determined by the EPA Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(5) Manufacturer

The term "manufacturer" includes a producer or importer.

(6) EPA Administrator

The term "EPA Administrator" means the Administrator of the Environmental Protection Agency.

(7) Fuel

The term "fuel" means gasoline and diesel fuel. The Secretary (after consultation with the Secretary of Transportation) may, by regulation, include any product of petroleum or natural gas within the meaning of such term if he determines that such inclusion is consistent with the need of the Nation to conserve energy.

(c) Determination of fuel economy

For purposes of this section—

(1) In general

Fuel economy for any model type shall be measured in accordance with testing and calculation procedures established by the EPA Administrator by regulation. Procedures so established shall be the procedures utilized by the EPA Administrator for model year 1975 (weighted 55 percent urban cycle, and 45 percent highway cycle), or procedures which yield comparable results. Procedures under this subsection, to the extent practicable, shall require that fuel economy tests be conducted in conjunction with emissions tests conducted under section 206 of the Clean Air Act. The EPA Administrator shall report any measurements of fuel economy to the Secretary.

(2) Special rule for fuels other than gasoline

The EPA Administrator shall by regulation determine that quantity of any other fuel which is the equivalent of one gallon of gasoline.

(3) Time by which regulations must be issued

Testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months before the model year to which such procedures apply.

(d) Special rules for small manufacturers

(1) In general

If, on the application of a small manufacturer, the Secretary determines that it is not feasible for such manufacturer to meet the tax-free fuel economy level for the model year with respect to all automobiles produced by such manufacturer or with respect to a model type produced by such manufacturer, the Secretary may by regulation prescribe an alternate rate schedule for such model year for all automobiles produced by such manufacturer or for such model type, as the case may be. The alternate rate schedule shall be based on the maximum feasible fuel economy level which such manufacturer can meet for such model year with respect to all automobiles or with respect to such model type, as the case may be.

(2) Application to include necessary information

An application under this subsection for any model year shall contain such information as the Secretary may by regulations prescribe.

(3) Determinations to be made only after consultation

Determinations under paragraph (1) shall be made by the Secretary only after consulta-

tion with the Secretary of Energy, the Secretary of Transportation, and other appropriate Federal officers.

(4) Small manufacturer defined

(A) In general

For purposes of this subsection, the term "small manufacturer" means any manufacturer—

(i) who manufactured (whether or not in the United States) fewer than 10,000 automobiles in the second model year preceding the model year for which the determination under paragraph (1) is being made, and

(ii) who can reasonably be expected to manufacture (whether or not in the United States) fewer than 10,000 automobiles in the model year for which the determination under paragraph (1) is being made.

(B) Special rules

For purposes of subparagraph (A)—

(i) Manufacturer of automobiles produced abroad determined without regard to importation

The meaning of the term "manufacturer" shall be determined without regard to subsection (b)(5).

(ii) Controlled groups

Persons who are members of the same controlled group of corporations shall be treated as one manufacturer. For purposes of the preceding sentence, the term "controlled group of corporations" has the meaning given to such term by section 1563(a); except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a).

(Added Pub. L. 95-618, title II, § 201(a), Nov. 9, 1978, 92 Stat. 3180.)

REFERENCES IN TEXT

The date of enactment of this section, referred to in subsec. (b)(1)(B), is Nov. 9, 1978.

Section 206 of the Clean Air Act, referred to in subsec. (c)(1), is section 206 of act July 14, 1955, ch. 360, title II, as added Dec. 31, 1970, Pub. L. 91-604, § 8(a), 84 Stat. 1694, which is classified to section 7525 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section 201(g) of Pub. L. 95-618 provided that: "The amendments made by this section [enacting this section and amending sections 1016, 4217, 4221, 4222, 4293, and 6416 of this title] shall apply with respect to 1980 and later model year automobiles (as defined in section 4064(b) of the Internal Revenue Code of 1954)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 4217, 4221, 4222, 4293, 6416 of this title.

PART II—TIRES AND TUBES

§ 4071. Imposition of tax

[See main edition for text of (a) to (c)]

(d) Rate reduction

On and after October 1, 1984—

(1) the tax imposed by paragraph (1) of subsection (a) shall be 5 cents a pound;

(2) the tax imposed by paragraph (3) of subsection (a) shall be 9 cents a pound; and

(3) paragraph (4) of subsection (a) shall not apply.

[See main edition for text of (e)]

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(4), 92 Stat. 2756.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-599 substituted "1984" for "1979".

PART III—PETROLEUM PRODUCTS

SUBPART A—GASOLINE

§ 4081. Imposition of tax

[See main edition for text of (a)]

(b) Rate reduction

On and after October 1, 1984, the tax imposed by this section shall be 1½ cents a gallon.

(c) Gasoline mixed with alcohol

(1) In general

Under regulations prescribed by the Secretary, no tax shall be imposed by this section on the sale of any gasoline—

(A) in a mixture with alcohol, if at least 10 percent of the mixture is alcohol, or

(B) for use in producing a mixture at least 10 percent of which is alcohol.

(2) Later separation of gasoline

If any person separates the gasoline from a mixture of gasoline and alcohol on which tax was not imposed by reason of this subsection, such person shall be treated as the producer of such gasoline.

(3) Alcohol defined

For purposes of this subsection, the term "alcohol" includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal.

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(5), 92 Stat. 2756; Nov. 9, 1978, Pub. L. 95-618, title II, § 221(a)(1), 92 Stat. 3185.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-599 substituted "1984" for "1979".

Subsec. (c). Pub. L. 95-618 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 221(a)(2) of Pub. L. 95-618 provided that: "The amendment made by paragraph (1) [amending this section] shall apply to sales after December 31, 1978, and before October 1, 1984."

EXPEDITION OF CERTAIN ETHANOL PRODUCTION APPLICATIONS

Section 221(d) of Pub. L. 95-618 provided that: "The Secretary of the Treasury shall expedite, to the maximum extent possible, action on the application of any person with respect to the production of ethanol for use in producing gasoline described in section 4081(c) (or in producing liquid fuel described in section 4041(k)) of the Internal Revenue Code of 1954. Within 6 months after the date of the enactment of this Act [Nov. 9, 1978], the Secretary shall furnish to the Com-

mittee on Finance, United States Senate, and to the Committee on Ways and Means, United States House of Representatives, recommendations for legislation necessary to provide for changes in the provisions of chapter 51 of the Internal Revenue Code of 1954 [section 5001 et seq. of this title] to provide a simple, expeditious procedure for processing such applications and to simplify the regulation of such persons for purposes of such chapter consistent with adequate safeguards against the use of such applications to avoid or evade compliance with the provisions of such chapter relating to distilled spirits procured, dealt in, or used for other purposes."

SUBPART B—LUBRICATING OIL

Sec.
4093. Exemptions.

AMENDMENTS

1978—Pub. L. 95-618, title IV, § 404(c), Nov. 9, 1978, 92 Stat. 3205, in item 4093 substituted "Exemptions" for "Exemption of sales to producer".

§ 4091. Imposition of tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4093, 4101, 6206, 6424 of this title.

§ 4092. Definitions

(a) Certain vendees considered as manufacturers

For purposes of this subpart, a vendee who has purchased lubricating oils free of tax under section 4093(a) shall be considered the manufacturer or producer of such lubricating oils.

[*See main edition for text of (b)*]

(As amended Nov. 9, 1978, Pub. L. 95-618, title IV, § 404(b), 92 Stat. 3205.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-618 substituted "section 4093(a)" for "section 4093".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable to sales on or after the first day of the first calendar month beginning more than 10 days after Nov. 9, 1978, see section 404(d) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 4093 of this title.

§ 4093. Exemptions

(a) Sales to manufacturers or producers for resale

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on lubricating oils sold to a manufacturer or producer of lubricating oils for resale by him.

(b) Use in producing rerefined oil

(1) Sales to rerefiners

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on lubricating oil sold for use in mixing with used or waste lubricating oil which has been cleaned, renovated, or rerefined. Any person to whom lubricating oil is sold tax-free under this paragraph shall be treated as the producer of such lubricating oil.

(2) Use in producing rerefined oil

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4091 on lubricating oil used in producing rerefined oil to the extent that the amount of such lubricating oil does not exceed 55 percent of such rerefined oil.

(3) Rerefined oil defined

For purposes of this subsection, the term "rerefined oil" means oil 25 percent or more of which is used or waste lubricating oil which has been cleaned, renovated, or rerefined.

(As amended Nov. 9, 1978, Pub. L. 95-618, title IV, § 404(a), 92 Stat. 3204.)

AMENDMENTS

1978—Pub. L. 95-618 in section heading substituted "Exemptions" for "Exemption of sales to producers" and in text designated existing provisions as subsec. (a) and, as so designated, substituted "by section 4091 on" for "under this subpart upon" and added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 404(d) of Pub. L. 95-618 provided that: "The amendments made by this section [amending this section and section 4092 of this title] shall apply to sales on or after the first day of the first calendar month beginning more than 10 days after the date of the enactment of this Act [Nov. 9, 1978]."

Subchapter B—Coal

Sec.
4121. Imposition of tax.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 30 section 934.

§ 4121. Imposition of tax

(a) Tax imposed

There is hereby imposed on coal sold by the producer a tax at the rates of—

(1) 50 cents per ton in the case of coal from underground mines located in the United States, and

(2) 25 cents per ton in the case of coal from surface mines located in the United States.

(b) Limitation on tax

The amount of the tax imposed by subsection (a) with respect to a ton of coal shall not exceed 2 percent of the price at which such ton of coal is sold by the producer.

(c) Tax not to apply to lignite

The tax imposed by subsection (a) shall not apply in the case of lignite.

(d) Definitions

For purposes of this subchapter—

(1) Coal from surface mines

Coal shall be treated as produced from a surface mine if all of the geological matter above the coal being mined is removed before the coal is extracted from the earth. Coal extracted by auger shall be treated as coal from a surface mine.

(2) Coal from underground mines

Coal shall be treated as produced from an underground mine if it is not produced from a surface mine.

(3) United States

The term "United States" has the meaning given to it by paragraph (1) of section 638.

(4) Ton

The term "ton" means 2,000 pounds.

(Added Pub. L. 95-227, § 2(a), Feb. 10, 1978, 92 Stat. 11.)

PRIOR PROVISIONS

A prior section 4121, acts Aug. 16, 1954, ch. 736, 68A Stat. 486; Sept. 2, 1958, Pub. L. 85-859, title I, § 112, 72 Stat. 1277, which imposed a 5 percent tax on electric, gas, and oil household appliances and their accessories, was repealed by Pub. L. 89-44, title II, § 203, June 21, 1965, 79 Stat. 139.

EFFECTIVE DATE

Section 2(d) of Pub. L. 95-227 provided that: "The amendments made by this section [enacting this section and amending sections 4218, 4221, 4293, and 6416 of this title] shall apply with respect to sales after March 31, 1978."

Section 5 of Pub. L. 95-227 provided that: "Notwithstanding any other provision of this Act [see Short Title of 1978 Amendment note set out under section 1 of this title] to the contrary, no provision of this Act (including any amendment made by any such provision) shall take effect or apply unless an Act, enacted after the date of enactment of this Act [Feb. 10, 1978], contains a provision, explicitly in satisfaction of the requirements of this section, which states that it is the intent of the Congress that the provisions of this Act shall take effect."

Pub. L. 95-239, § 20(c), Mar. 1, 1978, 92 Stat. 106, provided that: "In accordance with the requirements of section 5 of the Black Lung Benefits Revenue Act of 1977 (section 5 of Pub. L. 95-227, set out above), it is hereby provided that such Act shall take effect in accordance with the provisions of such Act. The provisions of this subsection are hereby deemed to be in explicit satisfaction of the requirements of section 5 of such Act."

SHORT TITLE OF 1978 AMENDMENT

For Short Title of Pub. L. 95-227, Feb. 10, 1978, 92 Stat. 11, as "Black Lung Benefits Revenue Act of 1977", see Short Title of 1978 Amendments note set out under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4218, 4221, 4293, 6416 of this title; title 30 section 934a.

Subchapter F—Special Provisions Applicable to Manufacturers Tax

§ 4216. Definition of price

[*See main edition for text of* (a)]

(b) Constructive sale price

(1) In general

If an article is—

(A) sold at retail,

(B) sold on consignment, or

(C) sold (otherwise than through an arm's length transaction) at less than the fair market price,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article sold at retail (other than an article the sale of which is taxable under section 4061(a)), the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost). This paragraph shall not apply if paragraph (2) applies.

[*See main edition for text of* (2) *to* (6); (c) *to* (f)]

(As amended Oct. 14, 1978, Pub. L. 95-458, § 1(a), (b), 92 Stat. 1255.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-458 substituted "article sold at retail (other than an article the sale of which is taxable under section 4061(a)), the computation" for "article sold at retail, the computation" and inserted provision requiring the computation of tax on articles taxable under section 4061(a) which are sold at retail to be a percentage, but not greater than 100% of the actual selling price based on the highest price for which the articles are sold by manufacturers and producers in the ordinary course of trade, determined without regard to individual manufacturer's or producer's cost.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 1(c) of Pub. L. 95-458 provided that: "The amendments made by this section [to subsec. (b) of this section] shall apply to articles sold by the manufacturer or producer on or after the first day of the first calendar quarter beginning 30 days or more after the date of enactment of this Act [Oct. 14, 1978]."

§ 4217. Leases

[*See main edition for text of* (a) *to* (d)]

(e) Leases of automobiles subject to gas guzzler tax

(1) In general

In the case of the lease of an automobile the sale of which by the manufacturer would be taxable under section 4064, the foregoing provisions of this section shall not apply, but, for purposes of this chapter—

(A) the first lease of such automobile by the manufacturer shall be considered to be a sale, and

(B) any lease of such automobile by the manufacturer after the first lease of such automobile shall not be considered to be a sale.

(2) Payment of tax

In the case of a lease described in paragraph (1)(A)—

(A) there shall be paid by the manufacturer on each lease payment that portion of the total gas guzzler tax which bears the same ratio to such total gas guzzler tax as such payment bears to the total amount to be paid under such lease,

(B) if such lease is canceled, or the automobile is sold or otherwise disposed of,

before the total gas guzzler tax is payable, there shall be paid by the manufacturer on such cancellation, sale, or disposition the difference between the tax imposed under subparagraph (A) on the lease payments and the total gas guzzler tax, and

(C) if the automobile is sold or otherwise disposed of after the total gas guzzler tax is payable, no tax shall be imposed under section 4064 on such sale or disposition.

(3) Definitions

For purposes of this subsection—

(A) Manufacturer

The term "manufacturer" includes a producer or importer.

(B) Total gas guzzler tax

The term "total gas guzzler tax" means the tax imposed by section 4064, computed at the rate in effect on the date of the first lease.

(As amended Nov. 9, 1978, Pub. L. 95-618, title II, § 201(d), 92 Stat. 3184.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-618 added subsec. (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

§ 4218. Use by manufacturer or importer considered sale

(a) General rule

If any person manufactures, produces, or imports an article (other than an article specified in subsection (b), (c), or (d)) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him. This subsection shall not apply in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him. For the purpose of applying the first sentence of this subsection to coal taxable under section 4121, the words "(otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him)" shall be disregarded.

[See main edition for text of (b) to (e)]

(As amended Feb. 10, 1978, Pub. L. 95-227, § 2(b)(1), 92 Stat. 11.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-227 added provisions relating to applying first sentence of this subsec. to coal taxable under section 4121 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95-227, set out as an Effective Date note under section 4121 of this title.

Subchapter G—Exemptions, Registration, Etc.

§ 4221. Certain tax-free sales

(a) General rule

Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121) on the sale by the manufacturer of an article—

[See main edition for text of (1) to (5)]

but only if such exportation or use is to occur before any other use. Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064.

[See main edition for text of (b)]

(c) Manufacturer relieved from liability in certain cases

In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4063(a)(6) or (7), 4063(b), 4063(e), 4083, or 4093, if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) Definitions

For purposes of this section—

[See main edition for text of (1) to (6)]

(7) Qualified bus

(A) In general

The term "qualified bus" means—

(i) an intercity or local bus, and

(ii) a school bus.

(B) Intercity or local bus

The term "intercity or local bus" means any automobile bus which is used predominantly in furnishing (for compensation) passenger land transportation available to the general public if—

(i) such transportation is scheduled and along regular routes, or

(ii) the seating capacity of such bus is at least 20 adults (not including the driver).

(C) School bus

The term "school bus" means any automobile bus substantially all the use of which is in transporting students and employees of schools. For purposes of the preceding sentence, the term "school" means an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are carried on.

(e) Special rules

[See main edition for text of (1) to (4)]

(5) Tires, tubes, and tread rubber used on intercity, local, and school buses

Under regulations prescribed by the Secretary—

(A) the taxes imposed by paragraphs (1) and (3) of section 4071(a) shall not apply in the case of tires or inner tubes for tires sold for use by the purchaser on or in connection with a qualified bus, and

(B) the tax imposed by paragraph (4) of section 4071(a) shall not apply in the case of tread rubber sold for use by the purchaser in the recapping or retreading of any tire to be used by the purchaser on or in connection with a qualified bus.

(6) Bus parts and accessories

Under regulations prescribed by the Secretary, the tax imposed by section 4061(b) shall not apply to any part or accessory which is sold for use by the purchaser on or in connection with an automobile bus.

(As amended Pub. L. 95-227, § 2(b)(2), Feb. 10, 1978, 92 Stat. 12; Pub. L. 95-600, title VII, § 701(ff)(2)(A), Nov. 6, 1978, 92 Stat. 2924; Pub. L. 95-618, title II, §§ 201(c)(1), 232(a), 233(c)(1), (2), Nov. 9, 1978, 92 Stat. 3183, 3189, 3191, 3192.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-618, § 201(c)(1), added provision that paragraphs (4) and (5) not apply to the tax imposed by section 4064.

Pub. L. 95-227 added "(other than under section 4121)" following "this chapter".

Subsec. (c). Pub. L. 95-600 substituted "4063(b), 4063(e)," for "4063(b),".

Subsec. (d)(7). Pub. L. 95-618, § 233(c)(2), added subsec. (d)(7).

Subsec. (e)(5). Pub. L. 95-618, § 233(c)(1), substituted provisions relating to the applicability of the taxes imposed by section 4071(a)(1) and (3) in the case of tires or inner tubes for tires sold for use by the purchaser on or in connection with a qualified bus and the tax imposed by section 4071(a)(4) in the case of tread rubber sold for use by the purchaser in the recapping or retreading of any tire to be used by the purchaser on or in connection with a qualified bus for provisions relating to the applicability of the tax imposed by section 4061(a) to a bus sold to any person for use exclusively in transporting students and employees of schools operated by State or local governments or by nonprofit educational organizations.

Subsec. (e)(6). Pub. L. 95-618, § 232(a), added subsec. (e)(6).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Amendment of subsec. (a) by Pub. L. 95-227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95-227, set out as an Effective Date note under section 4121 of this title.

Amendment of subsec. (c) by section 701(ff)(2)(A) of Pub. L. 95-600 effective on the first day of the first calendar month beginning more than 20 days after Nov. 6, 1978, see section 701(ff)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 4063 of this title.

Amendment of subsec. (d) and (e)(5) by Pub. L. 95-618 effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

Section 232(c) of Pub. L. 95-618 provided that: "The amendments made by this section [adding subsec. (e)(6) of this section and amending section 6416 of this title] shall apply to sales on or after the first day of the first calendar month beginning more than 10 days after the date of the enactment of this Act [Nov. 9, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4218, 4222, 4223, 6412, 6416, 6421, 6424, 6427 of this title; title 15 section 2052.

§ 4222. Registration

[See main edition for text of (a) to (c)]

(d) Registration in the case of certain other exemptions

The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections 4063(a)(7), 4063(b), 4063(e), 4064(b)(1)(C), 4083, 4093, and 4182(b), and the exemptions authorized under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary.

[See main edition for text of (e)]

(As amended Pub. L. 95-600, title VII, § 701(ff)(2)(B), Nov. 6, 1978, 92 Stat. 2925; Pub. L. 95-618, title II, §§ 201(e), 231(f)(2), Nov. 9, 1978, 92 Stat. 3184, 3189.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-618 substituted "4063(a)(7), 4063(b), 4064(b)(1)(C)," for "4063(a)(6) and (7), 4063(b),".

Pub. L. 95-600 substituted "4063(b), 4063(e)," for "4063(b),".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (d) by section 201(d) of Pub. L. 95-618 adding "4064(b)(1)(C)," after "4063(b),", applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Amendment of subsec. (d) by section 231(f) of Pub. L. 95-618, which substituted "4063(a)(7)" for "4063(a)(6) and (7)", applicable with respect to articles sold after Nov. 9, 1978, see section 231(g) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 4063 of this title.

Amendment of subsec. (d) by section 701(ff)(2)(B) of Pub. L. 95-600 effective on the first day of the first calendar month beginning more than 20 days after Nov. 6, 1978, see section 701(ff)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 4063 of this title.

CHAPTER 33—FACILITIES AND SERVICES

Subchapter B—Communications

§ 4254. Computation of tax

[See main edition for text of (a) and (b)]

(c) Certain State and local taxes not included

For purposes of this subchapter, in determining the amounts paid for communications services, there shall not be included the amount of any State or local tax imposed on the furnishing or sale of such services, if the amount of such tax is separately stated in the bill.

(As amended Nov. 12, 1977, Pub. L. 95-172, § 2(a), 91 Stat. 1358.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-172 added subsec. (c).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(b) of Pub. L. 95-172 provided that: "The amendment made by this section [enacting subsec. (c) of this section] shall take effect only with respect to amounts paid pursuant to bills first rendered on or after the first day of the first month which begins more than 20 days after the date of the enactment of this Act [Nov. 12, 1977]. For purposes of the preceding sentence, in the case of communications services rendered more than 2 months before the effective date provided in the preceding sentence, no bill shall be treated as having been first rendered on or after such effective date."

Subchapter E—Special Provisions Applicable to Services and Facilities Taxes

§ 4293. Exemption for United States and possessions

The Secretary of the Treasury may authorize exemption from the taxes imposed by section 4041, chapter 32 (other than the taxes imposed by sections 4064 and 4121) and subchapter B of chapter 33, as to any particular article, or service or class of articles or services, to be purchased for the exclusive use of the United States, if he determines that the imposition of such taxes with respect to such articles or services, or class of articles or services will cause substantial burden or expense which can be avoided by granting tax exemption and that full benefit of such exemption, if granted, will accrue to the United States.

(As amended Feb. 10, 1978, Pub. L. 95-227, § 2(b)(3), 92 Stat. 12; Oct. 21, 1978, Pub. L. 95-502, title II, § 202(b), 92 Stat. 1697; Nov. 9, 1978, Pub. L. 95-618, title II, § 201(c)(2), 92 Stat. 3184.)

AMENDMENTS

1978—Pub. L. 95-618 substituted "taxes imposed by sections 4064 and 4121" for "tax imposed by section 4121".

Pub. L. 95-502 substituted "section 4041, chapter 32" for "chapters 31 and 32".

Pub. L. 95-227 added "(other than the tax imposed by section 4121)" following "chapters 31 and 32".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Amendment by Pub. L. 95-502 effective Oct. 1, 1980, see section 202(d) of Pub. L. 95-502, set out as an Effective Date note under section 4042 of this title.

Amendment by Pub. L. 95-227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95-227, set out as an Effective Date note under section 4121 of this title.

CHAPTER 35—TAXES ON WAGERING

Subchapter A—Tax on Wagers

§ 4402. Exemptions

No tax shall be imposed by this subchapter—

[See main edition for text of (1)]

(2) Coin-operated devices

On any wager placed in a coin-operated device (as defined in section 4462 as in effect for years beginning before July 1, 1980), or on any amount paid, in lieu of inserting a coin, token, or similar object, to operate a device described in section 4462(a)(2) (as so in effect), or

[See main edition for text of (3)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 521(c)(1), 92 Stat. 2884.)

AMENDMENTS

1978—Par. (2). Pub. L. 95-600 substituted "(as defined in section 4462 as in effect for years beginning before July 1, 1980)" for "with respect to which an occupational tax is imposed by section 4461" and "(as so in effect), or" for "if an occupational tax is imposed with respect to such device by section 4461, or".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of par. (2) of this section by Pub. L. 95-600 applicable with respect to years beginning after June 30, 1980, see section 521(d)(2) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 4464 of this title.

CHAPTER 36—CERTAIN OTHER EXCISE TAXES

Subchapter B—Occupational Tax on Coin-Operated Devices

§ 4461. Imposition of tax

REPEAL OF SECTION

Pub. L. 95-600, title V, § 521(b), (d)(2), Nov. 6, 1972, 92 Stat. 2884, 2885, provided that, effective with respect to years beginning after June 30, 1980, this subchapter, comprising sections 4461 to 4464 of this title, is repealed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4464, 7326 of this title.

§§ 4462, 4463

REPEAL OF SECTIONS

Pub. L. 95-600, title V, § 521(b), (d)(2), Nov. 6, 1972, 92 Stat. 2884, 2885, provided that, effective with respect to years beginning after June 30, 1980, this subchapter, comprising sections 4461 to 4464 of this title, is repealed.

§ 4464. Credit for State-imposed taxes

[See main edition for text of (a)]

(b) Limitations

[See main edition for text of (1)]

(2) Credit not to exceed 95 percent of tax

The credit under subsection (a) with respect to any coin-operated gaming device shall not exceed 95 percent of the tax imposed by section 4461 with respect to such device.

[See main edition for text of (c)]

(As amended Pub. L. 95-600, title V, § 521(a), Nov. 6, 1978, 92 Stat. 2884.)

REPEAL OF SECTION

Pub. L. 95-600, title V, § 521(b), (d)(2), Nov. 6, 1972, 92 Stat. 2884, 2885, provided that, effective with respect to years begin-

ning after June 30, 1980, this subchapter, comprising sections 4461 to 4464 of this title, is repealed.

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-600 substituted "95 percent" for "80 percent" in subsec. catchline and text.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 521(d) of Pub. L. 95-600 provided that:

"(1) The amendments made by subsection (a) [amending subsec. (b)(2) of this section] shall apply with respect to years ending June 30, 1979, and June 30, 1980.

"(2) The amendments made by subsections (b) [repealing sections 4461 to 4464 of this title] and (c) [amending sections 4402(2) and 4901(a) of this title] shall apply with respect to years beginning after June 30, 1980."

Subchapter D—Tax on Use of Certain Vehicles

§ 4481. Imposition of tax

(a) Imposition of tax

A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of more than 26,000 pounds, at the rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof. In the case of the taxable period beginning on July 1, 1984, and ending on September 30, 1984, the tax shall be at the rate of 75 cents for such period for each 1,000 pounds of taxable gross weight or fraction thereof.

[See main edition for text of (b) to (d)]

(e) Period tax in effect

The tax imposed by this section shall apply only to use before October 1, 1984.

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(6), (7), 92 Stat. 2756.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-599, § 502(a)(6), substituted "1984" for "1979" in two places.

Subsec. (e). Pub. L. 95-599, § 502(a)(7), substituted "1984" for "1979".

§ 4482. Definitions

[See main edition for text of (a) and (b)]

(c) Other definitions

For purposes of this subchapter—

[See main edition for text of (1) to (3)]

(4) Taxable period

The term "taxable period" means any year beginning before July 1, 1984, and the period which begins on July 1, 1984, and ends at the close of September 30, 1984.

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(8), 92 Stat. 2756.)

AMENDMENTS

1978—Subsec. (c)(4). Pub. L. 95-599 substituted "1984" for "1979" in three places.

§ 4483. Exemptions

[See main edition for text of (a) and (b)]

(c) Certain transit-type buses

Under regulations prescribed by the Secretary, no tax shall be imposed by section 4481 on the use of any bus which is of the transit type (rather than of the intercity type) by a person who, for the last 3 months of the preceding year (or for such other period as the Secretary may by regulations prescribe for purposes of this subsection), met the 60-percent passenger fare revenue test set forth in section 6421(b)(2) (as in effect on the day before the date of the enactment of the Energy Tax Act of 1978) as applied to the period prescribed for purposes of this subsection.

(As amended Nov. 9, 1978, Pub. L. 95-618, title II, § 233(a)(3)(C), 92 Stat. 3191.)

REFERENCES IN TEXT

The date of the enactment of the Energy Tax Act of 1978, referred to in subsec. (c), is the date of enactment of Pub. L. 95-618 which is Nov. 9, 1978.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-618 inserted "(as in effect on the day before the date of the enactment of the Energy Tax Act of 1978)" following "section 6421(b)(2)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

Subchapter E—Tax on Use of Civil Aircraft

§ 4492. Definitions

[See main edition for text of (a) and (b)]

(c) Other definitions

For purposes of this subchapter—

[See main edition for text of (1) and (2)]

(3) Navigable airspace of the United States

The term "navigable airspace of the United States" has the definition given to such term by section 101(27) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1301(27)), except that such term does not include the navigable airspace of the Commonwealth of Puerto Rico or of any possession of the United States.

(As amended Pub. L. 95-163, § 17(b)(1), Nov. 9, 1977, 91 Stat. 1286; Pub. L. 95-504, § 2(b), Oct. 24, 1978, 92 Stat. 1705.)

REFERENCES IN TEXT

Section 101(27) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1301(27)), referred to in subsec. (c)(3), probably should read section 101(29) of the Federal Aviation Act of 1958 (49 U.S.C., sec. 1301(29)), to reflect the redesignation of such par. (27), which was originally par. (24), by Pub. L. 93-366, title II, § 206, Aug. 7, 1974, 88 Stat. 419, Pub. L. 95-163, § 17(b)(1), and Pub. L. 95-504, § 2(b).

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95-504 substituted reference to section 101(27) of the Federal Aviation Act

of 1958 for reference to section 101(25) of such Act. See References in Text note set out above.

1977—Subsec. (c)(3). Pub. L. 95-163 substituted reference to section 101(25) of the Federal Aviation Act of 1958 for reference to section 101(24) of such Act. See References in Text note set out above.

CHAPTER 40—GENERAL PROVISIONS RELATING TO OCCUPATIONAL TAXES

§ 4901. Payment of tax

(a) Condition precedent to carrying on certain business

No person shall be engaged in or carry on any trade or business subject to the tax imposed by section 4411 (wagering) until he has paid the special tax therefor.

[See main edition for text of (b)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 521(c)(2), 92 Stat. 2884.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 struck out "or 4461(a)(1) (coin-operated gaming devices)" following "(wagering)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by Pub. L. 95-600 applicable with respect to years beginning after June 30, 1980, see section 521(d)(2) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 4464 of this title.

CHAPTER 41—PUBLIC CHARITIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6104, 6161, 6211, 6213, 6214, 6405, 6501, 6512, 6601, 7422 of this title.

§ 4911. Tax on excess expenditures to influence legislation

[See main edition for text of (a) and (b)]

(c) Definitions

For purposes of this section—

[See main edition for text of (1)]

(2) Lobbying nontaxable amount

The lobbying nontaxable amount for any organization for any taxable year is the lesser of (A) $1,000,000 or (B) the amount determined under the following table:

If the exempt purpose expenditures are—	The lobbying nontaxable amount is—
Not over $500,000	20 percent of the exempt purpose expenditures.
Over $500,000 but not over $1,000,000.	$100,000, plus 15 percent of the excess of the exempt purpose expenditures over $500,000
Over $1,000,000 but not over $1,500,000.	$175,000 plus 10 percent of the excess of the exempt purpose expenditures over $1,000,000.
Over $1,500,000	$225,000 plus 5 percent of the excess of the exempt purpose expenditures over $1,500,000.

[See main edition for text of (3) and (4); (d) to (f)]

(As amended Pub. L. 95-600, title VII, § 703(g)(1), Nov. 6, 1978, 92 Stat. 2940.)

AMENDMENTS

1978—Subsec. (c)(2). Pub. L. 95-600 in heading of table substituted "exempt purpose expenditures" for "proposed expenditures".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

CHAPTER 42—PRIVATE FOUNDATIONS; BLACK LUNG BENEFIT TRUSTS

Subchapter		Sec.[1]
A.	Private foundations	4940
B.	Black lung benefit trusts	4951

AMENDMENTS

1978—Pub. L. 95-227, § 4(c)(2)(A), Feb. 10, 1978, 92 Stat. 22, in Chapter heading added "; Black Lung Benefit Trusts" following "Foundations", added headings for Subchapters A and B, and designated existing provisions as Subchapter A.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 275, 509, 2055, 6104, 6161, 6211, 6212, 6213, 6214, 6344, 6405, 6501, 6511, 6512, 6601, 6684, 6687, 7422 of this title.

Subchapter A—Private Foundations

§ 4940. Excise tax based on investment income

(a) Tax-exempt foundations

There is hereby imposed on each private foundation which is exempt from taxation under section 501(a) for the taxable year, with respect to the carrying on its activities, a tax equal to 2 percent of the net investment income of such foundation for the taxable year.

[See main edition for text of (b)]

(c) Net investment income defined

[See main edition for text of (1)]

(2) Gross investment income

For purposes of paragraph (1), the term "gross investment income" means the gross amount of income from interest, dividends, rents, payments with respect to securities loans (as defined in section 512(a)(5)), and royalties, but not including any such income to the extent included in computing the tax imposed by section 511.

[See main edition for text of (3) to (5)]

(As amended Pub. L. 95-345, § 2(a)(4), Aug. 15, 1978, 92 Stat. 481; Pub. L. 95-600, title V, § 520(a), Nov. 6, 1978, 92 Stat. 2884.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 substituted "2 percent" for "4 percent".

Subsec. (c)(2). Pub. L. 95-345 added provisions relating to payments with respect to securities loans.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 520(b) of Pub. L. 95-600 provided that: "The amendment made by the first section of this Act [probably meaning section 520(a), which amended subsec. (a) of this section] shall apply to taxable years beginning after September 30, 1977."

Amendment by Pub. L. 95-345 applicable with respect to amounts received after Dec. 31, 1976, as pay-

[1] Section numbers editorially supplied for convenience of user.

ments with respect to securities loans (as defined in section 512(a)(5) of this title), and transfers of securities, under agreements described in section 1058 of this title, occurring after such date, see section 2(e) of Pub. L. 95-345, set out as an Effective Date of 1978 Amendment note under section 509 of this title.

SAVINGS PROVISIONS

Section 101(*l*) of Pub. L. 91-172 as amended by Pub. L. 93-490, § 4(a), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94-455, title XIII, §§ 1301(a), 1309(a), Oct. 4, 1976, 90 Stat. 1713, 1729; Pub. L. 95-600, title VII, § 703(f), Nov. 6, 1978, 92 Stat. 2940, provided that:

* * * * *

"(2) *Section 4941.*—Section 4941 [section 4941 of this title] shall not apply to—

* * * * *

"(F) the sale, exchange, or other disposition (other than by lease) of property which is owned by a private foundation to a disqualified person if—

"(i) such foundation is leasing substantially all of such property under a lease to which subparagraph (C) applies,

* * * * *

§ 4941. Taxes on self-dealing

APPLICABILITY TO DETERMINATION OF STATUS AS SUBSTANTIAL CONTRIBUTOR FOR PURPOSES OF TAXES ON SELF-DEALING OF CONTRIBUTIONS MADE PRIOR TO OCTOBER 9, 1969

Determination of status as substantial contributor within section 507(d)(2) of this title for purposes of applying this section, see section 3 of Pub. L. 95-170, set out as a note under section 507 of this title.

§ 4942. Taxes on failure to distribute income

[*See main edition for text of* (a) *to* (i)]

(j) Other definitions

For purposes of this section—

[*See main edition for text of* (1) *to* (5)]

(6) Certain elderly care facilities

For purposes of this section (but no other provisions of this title), the term "operating foundation" includes any organization which, on May 26, 1969, and at all times thereafter before the close of the taxable year, operated and maintained as its principal functional purpose facilities for the long-term care, comfort, maintenance, or education of permanently and totally disabled persons, elderly persons, needy widows, or children but only if such organization meets the requirements of paragraph (3)(B)(ii).

(As amended Pub. L. 95-600, title V, § 522(a), Nov. 6, 1978, 92 Stat. 2885.)

AMENDMENTS

1978—Subsec. (j)(6). Pub. L. 95-600 added subsec. (j)(6).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 522(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [adding subsec. (j)(6) of this section] shall apply to taxable years beginning after December 31, 1969."

§ 4946. Definitions and special rules

(a) Disqualified person

(1) In general

For purposes of this subchapter, the term "disqualified person" means, with respect to a private foundation, a person who is—

[*See main edition for text of* (A) *to* (I); (2) *to* (4)]

(b) Foundation manager

For purposes of this subchapter, the term "foundation manager" means, with respect to any private foundation—

[*See main edition for text of* (1) *and* (2); (c) *and* (d)]

(As amended Pub. L. 95-227, § 4(c)(2)(B), Feb. 10, 1978, 92 Stat. 22.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-227 substituted "subchapter" for "chapter".

Subsec. (b). Pub. L. 95-227 substituted "subchapter" for "chapter".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date of 1978 Amendment note under section 192 of this title.

Subchapter B—Black Lung Benefit Trusts

Sec.
4951. Taxes on self-dealing.
4952. Taxes on taxable expenditures.
4953. Tax on excess contributions to black lung benefit trusts.

§ 4951. Taxes on self-dealing

(a) Initial taxes

(1) On self-dealer

There is hereby imposed a tax on each act of self-dealing between a disqualified person and a trust described in section 501(c)(21). The rate of tax shall be equal to 10 percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of the trust) who participates in the act of self-dealing.

(2) On trustee

In any case in which a tax is imposed by paragraph (1), there is hereby imposed on the participation of any trustee of such a trust in an act of self-dealing between a disqualified person and the trust, knowing that it is such an act, a tax equal to 2½ percent of the amount involved with respect to the act of self-dealing for each year (or part thereof) in the taxable period, unless such participation is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by any such trustee who participated in the act of self-dealing.

(b) Additional taxes

(1) On self-dealer

In any case in which an initial tax is imposed by subsection (a)(1) on an act of self-dealing by a disqualified person with a trust described in section 501(c)(21) and in which the act is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount involved. The tax imposed by this paragraph shall be paid by any disqualified person (other than a trustee acting only as a trustee of such a trust) who participated in the act of self-dealing.

(2) On trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee of such a trust refused to agree to part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount involved. The tax imposed by this paragraph shall be paid by any such trustee who refused to agree to part or all of the correction.

(c) Joint and several liability

If more than one person is liable under any paragraph of subsection (a) or (b) with respect to any one act of self-dealing, all such persons shall be jointly and severally liable under such paragraph with respect to such act.

(d) Self-dealing

(1) In general

For purposes of this section, the term "self-dealing" means any direct or indirect—

(A) sale, exchange, or leasing of real or personal property between a trust described in section 501(c)(21) and a disqualified person;

(B) lending of money or other extension of credit between such a trust and a disqualified person;

(C) furnishing of goods, services, or facilities between such a trust and a disqualified person;

(D) payment of compensation (or payment or reimbursement of expenses) by such a trust to a disqualified person; and

(E) transfer to, or use by or for the benefit of, a disqualified person of the income or assets of such a trust.

(2) Special rules

For purposes of paragraph (1)—

(A) the transfer of personal property by a disqualified person to such a trust shall be treated as a sale or exchange if the property is subject to a mortgage or similar lien;

(B) the furnishing of goods, services, or facilities by a disqualified person to such a trust shall not be an act of self-dealing if the furnishing is without charge and if the goods, services, or facilities so furnished are used exclusively for the purposes specified in section 501(c)(21)(A); and

(C) the payment of compensation (and the payment or reimbursement of expenses) by such a trust to a disqualified person for personal services which are reasonable and necessary to carrying out the exempt purpose of the trust shall not be an act of self-dealing if the compensation (or payment or reimbursement) is not excessive.

(e) Definitions

For purposes of this section—

(1) Taxable period

The term "taxable period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending on the earlier of—

(A) the date of mailing of a notice of deficiency with respect to the tax imposed by subsection (a)(1) under section 6212, or

(B) the date on which correction of the act of self-dealing is completed.

(2) Amount involved

The term "amount involved" means, with respect to any act of self-dealing, the greater of the amount of money and the fair market value of the other property given or the amount of money and the fair market value of the other property received; except that in the case of services described in subsection (d)(2)(C), the amount involved shall be only the excess compensation. For purposes of the preceding sentence, the fair market value—

(A) in the case of the taxes imposed by subsection (a), shall be determined as of the date on which the act of self-dealing occurs; and

(B) in the case of taxes imposed by subsection (b), shall be the highest fair market value during the correction period.

(3) Correction

The terms "correction" and "correct" mean, with respect to any act of self-dealing, undoing the transaction to the extent possible, but in any case placing the trust in a financial position not worse than that in which it would be if the disqualified person were dealing under the highest fiduciary standards.

(4) Correction period

The term "correction period" means, with respect to any act of self-dealing, the period beginning with the date on which the act of self-dealing occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b)(1), extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the act of self-dealing.

(5) Disqualified person

The term "disqualified person" means, with respect to a trust described in section 501(c)(21), a person who is—

(A) a contributor to the trust,

(B) a trustee of the trust,

(C) an owner of more than 10 percent of—

(i) the total combined voting power of a corporation,

(ii) the profits interest of a partnership, or

(iii) the beneficial interest of a trust or unincorporated enterprise,

which is a contributor to the trust,

(D) an officer, director, or employee of a person who is a contributor to the trust,

(E) the spouse, ancestor, lineal descendant, or spouse of a lineal descendant of an individual described in subparagraph (A), (B), (C), or (D),

(F) a corporation of which persons described in subparagraph (A), (B), (C), (D), or (E) own more than 35 percent of the total combined voting power,

(G) a partnership in which persons described in subparagraph (A), (B), (C), (D), or (E), own more than 35 percent of the profits interest, or

(H) a trust or estate in which persons described in subparagraph (A), (B), (C), (D), or (E), hold more than 35 percent of the beneficial interest.

For purposes of subparagraphs (C)(i) and (F), there shall be taken into account indirect stockholdings which would be taken into account under section 267(c), except that, for purposes of this paragraph, section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph. For purposes of subparagraphs (C) (ii) and (iii), (G), and (H), the ownership of profits or beneficial interests shall be determined in accordance with the rules for constructive ownership of stock provided in section 267(c) (other than paragraph (3) thereof), except that section 267(c)(4) shall be treated as providing that the members of the family of an individual are only those individuals described in subparagraph (E) of this paragraph.

(f) Payments of benefits

For purposes of this section, a payment, out of assets or income of a trust described in section 501(c)(21), for the purposes described in clause (i) of section 501(c)(21)(A) shall not be considered an act of self-dealing.

(Added Pub. L. 95-227, § 4(c)(1), Feb. 10, 1978, 92 Stat. 18.)

EFFECTIVE DATE

Subchapter effective with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date of 1978 Amendment note under section 192 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4953, 6213, 7454 of this title.

§ 4952. Taxes on taxable expenditures

(a) Tax imposed

(1) On the fund

There is hereby imposed on each taxable expenditure (as defined in subsection (d)) from the assets or income of a trust described in section 501(c)(21) a tax equal to 10 percent of the amount thereof. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

(2) On the trustee

There is hereby imposed on the agreement of any trustee of such a trust to the making of an expenditure, knowing that it is a taxable expenditure, a tax equal to 2½ percent of the amount thereof, unless such agreement is not willful and is due to reasonable cause. The tax imposed by this paragraph shall be paid by the trustee who agreed to the making of the expenditure.

(b) Additional taxes

(1) On the fund

In any case in which an initial tax is imposed by subsection (a)(1) on a taxable expenditure and such expenditure is not corrected within the correction period, there is hereby imposed a tax equal to 100 percent of the amount of the expenditure. The tax imposed by this paragraph shall be paid by the trustee out of the assets of the trust.

(2) On the trustee

In any case in which an additional tax is imposed by paragraph (1), if a trustee refused to agree to a part or all of the correction, there is hereby imposed a tax equal to 50 percent of the amount of the taxable expenditure. The tax imposed by this paragraph shall be paid by any trustee who refused to agree to part or all of the correction.

(c) Joint and several liability

For purposes of subsections (a) and (b), if more than one person is liable under subsection (a)(2) or (b)(2) with respect to the making of a taxable expenditure, all such persons shall be jointly and severally liable under such paragraph with respect to such expenditure.

(d) Taxable expenditure

For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a trust described in section 501(c)(21) other than for a purpose specified in such section.

(e) Definitions

(1) Correction

The terms "correction" and "correct" mean, with respect to any taxable expenditure, recovering part or all of the expenditure to the extent recovery is possible, and where full recovery is not possible, contributions by the person or persons whose liabilities for black lung benefit claims (as defined in section 192(e)) are to be paid out of the trust to the extent necessary to place the trust in a financial position not worse than that in which it would be if the taxable expenditure had not been made.

(2) Correction period

The term "correction period" means, with respect to any taxable expenditure, the period beginning with the date on which the taxable expenditure occurs and ending 90 days after the date of mailing of a notice of deficiency under section 6212 with respect to the tax imposed by subsection (b)(1), extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable expenditure.

(Added Pub. L. 95-227, § 4(c)(1), Feb. 10, 1978, 92 Stat. 21.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4953, 6213, 7454 of this title; title 30 section 934a.

§ 4953. Tax on excess contributions to black lung benefit trusts

(a) Tax imposed

There is hereby imposed for each taxable year a tax in an amount equal to 5 percent of the amount of the excess contributions made by a person to or under a trust or trusts described in section 501(c)(21). The tax imposed by this subsection shall be paid by the person making the excess contribution.

(b) Excess contribution

For purposes of this section, the term "excess contribution" means the sum of—

(1) the amount by which the amount contributed for the taxable year to a trust or trusts described in section 501(c)(21) exceeds the amount of the deduction allowable to such person for such contributions for the taxable year under section 192, and

(2) the amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(A) the excess of the maximum amount allowable as a deduction under section 192 for the taxable year over the amount contributed to the trust or trusts for the taxable year, and

(B) amounts distributed from the trust to the contributor which were excess contributions for the preceding taxable year.

(c) Treatment of withdrawal of excess contributions

Amounts distributed during the taxable year from a trust described in section 501(c)(21) to the contributor thereof the sum of which does not exceed the amount of the excess contribution made by the contributor shall not be treated as—

(1) an act of self-dealing (within the meaning of section 4951),

(2) a taxable expenditure (within the meaning of section 4952), or

(3) an act contrary to the purposes for which the trust is exempt from taxation under section 501(a).

(Added Pub. L. 95-227, § 4(c)(1), Feb. 10, 1978, 92 Stat. 22.)

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 275, 6161, 6201, 6211, 6212, 6213, 6214, 6344, 6405, 6501, 6512, 6601, 7422 of this title.

§ 4973. Tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, certain individual retirement annuities, and certain retirement bonds

[*See main edition for text of* (a)]

(b) Excess contributions

For purposes of this section, in the case of individual retirement accounts, individual retirement annuities, or bonds, the term "excess contributions" means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a rollover contribution described in section 402(a)(5), 403(a)(4), 403(b)(8), 408(d)(3)), or 409(b)(3)(C), over

(B) the amount allowable as a deduction under section 219 or 220 for such contributions, and

(2) the amount determined under this subsection for the preceding taxable year reduced by the sum of—

(A) the distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(B) the distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(C) the excess (if any) of the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed (determined without regard to sections 219(c)(5) and 220(c)(6)) to the accounts or for the annuities or bonds for the taxable year.

For purposes of this subsection, any contribution which is distributed from the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

(c) Section 403(b) contracts

For purposes of this section, in the case of a custodial account referred to in subsection (a)(2), the term "excess contributions" means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account (other than a rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(d)(3)(C)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

[*See main edition for text of* (2)]

(As amended Pub. L. 95-600, title I, §§ 156(c)(3), (5), 157(b)(3), (j)(1), title VII, § 701(aa)(1), Nov. 6, 1978, 92 Stat. 2803, 2804, 2809, 2921.)

AMENDMENTS

1978—Subsec. (b)(1)(A). Pub. L. 95-600, § 156(c)(3), added "403(b)(8)" following "403(a)(4)".

Subsec. (b)(2). Pub. L. 95-600, § 157(b)(3), substituted "reduced by the sum of—" for "reduced by the excess

(if any) of", struck out "the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed to the accounts or for the annuities or bonds for the taxable years and reduced by the sum of the distributions out of the account (for the taxable year and all prior taxable years) which were included in the gross income of the payee under section 408(d)(1)" in provision preceding par. (A), and added subpars. (A), (B), and (C).

Subsec. (b). Pub. L. 95–600, §§ 157(j)(1), 701(aa)(1), struck out in provisions following par. (2). "if such distribution consists of an excess contribution solely because of employer contributions to a plan or contract described in section 219(b)(2) or by reason of the application of section 219(b)(1) (without regard to the $1,500 limitation) or section 220(b)(1) (without regard to the $1,750 limitation) and only if such distribution does not exceed the excess of $1,500 or $1,750 if applicable, over the amount described in paragraph (1)(B)" following "as an amount not contributed".

Subsec. (c)(1). Pub. L. 95–600, § 156(c)(5), added "(other than a rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(d)(3)(C))" following "account".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(aa)(2) of Pub. L. 95–600 provided that: "The amendment made by paragraph (1) [amending subsec. (b) of this section] shall apply as if included in section 1501 of the Tax Reform Act of 1976 [section 1501 of Pub. L. 94–455] at the time of the enactment of such Act [Oct. 4, 1976]."

Amendment of subsecs. (b)(1)(A), and (c)(1) by section 156(c)(3), (5) of Pub. L. 95–600 applicable to distributions or transfers made after Dec. 31, 1978, in taxable years beginning after such date, see section 156(d) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 403 of this title.

Amendment of subsec. (b)(2) by section 157(b)(3) of Pub. L. 95–600 applicable to the determination of deductions for taxable years beginning after Dec. 31, 1975, see section 157(b)(4)(A) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 219 of this title.

Section 157(j)(2) of Pub. L. 95–600 provided that: "The amendment made by paragraph (1) [amending provision following subsec. (b)(2) of this section] shall apply to contributions made for taxable years beginning after December 31, 1977."

Section 703(j)(13) of Pub. L. 95–600, provided that: "Notwithstanding section 1904(d) of the Tax Reform Act of 1976 [section 1904(d) of Pub. L. 94–455, set out as an Effective Date of 1976 Amendment note under section 4041 of this title], the amendment made by section 1904(a)(22)(A) of such Act [amending this section] shall take effect on the date of the enactment of such Act [Oct. 4, 1976]."

SECTION REFERRED TO IN OTHER SECTIONS

This section referred to in sections 219, 220, 408, 6058 of this title.

§ 4974. Excise tax on certain accumulations in individual retirement accounts or annuities

[See main edition for text of (a) and (b)]

(c) Waiver of tax in certain cases

If the taxpayer establishes to the satisfaction of the Secretary that—

(1) the shortfall described in subsection (a) in the amount distributed during any taxable year was due to reasonable error, and

(2) reasonable steps are being taken to remedy the shortfall,

the Secretary may waive the tax imposed by subsection (a) for the taxable year.

(As amended Pub. L. 95–600, title I, § 157(i)(1), Nov. 6, 1978, 92 Stat. 2808.)

AMENDMENT

1978—Subsec. (c). Pub. L. 95–600 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 157(i)(2) of Pub. L. 95–600 provided that: "The amendment made by paragraph (1) [adding subsec. (c) of this section] shall apply to taxable years beginning after December 31, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 408, 6058 of this title.

§ 4975. Tax on prohibited transactions

[See main edition for text of (a) to (c)]

(d) Exemptions

The prohibitions provided in subsection (c) shall not apply to—

[See main edition for text of (1) and (2)]

(3) any loan to a leveraged employee stock ownership plan (as defined in subsection (e)(7)), if—

[See main edition for text of (A) and (B), (4) to (13), and concluding par.]

(e) Definitions

[See main edition for text of (1) to (6)]

(7) Leveraged employee stock ownership plan

The term "leveraged employee stock ownership plan" means a defined contribution plan—

[See main edition for text of (A) and (B)]

A plan shall not be treated as as[1] leveraged employee stock ownership plan unless it meets the requirements of subsections (e) and (h) of section 409A.

[See main edition for text of (8); (f) to (i)]

(As amended Pub. L. 95–600, title I, § 141(f) (5), (6), Nov. 6, 1978, 92 Stat. 2795.)

AMENDMENTS

1978—Subsec. (d)(3). Pub. L. 95–600, § 141(f)(6), substituted "leveraged employee" for "employee".

Subsec. (e)(7). Pub. L. 95–600, § 141(f)(5), substituted in heading "Leveraged employee" for "Employee", and in text, "leveraged employee" for "employee" and added provision that a plan not be treated as a leveraged employee stock ownership plan unless it meet the requirements of section 409A (e) and (h).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 409A of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 408, 414, 503, 6213, 6501, 6503, 7422 of this title; title 19 section 2373; title 29 sections 1056, 1132, 1203, 1222, 1342; title 45 section 726.

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[1] So in original. Probably should be "a".

CHAPTER 44—REAL ESTATE INVESTMENT TRUSTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6103, 6161, 6211, 6212, 6213, 6214, 6405, 6501, 6512, 6601, 7422 of this title.

Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

Subchapter A—Gallonage and Occupational Taxes

PART I—GALLONAGE TAXES

SUBPART A—DISTILLED SPIRITS

§ 5003. Cross references to exemptions, etc.

[See main edition for text of (1) to (8)]

(9) For provisions authorizing withdrawal of distilled spirits without payment of tax to customs bonded warehouses for export, see section 5522(a) and section 5214(a)(9).

[See main edition for text of (10) to (13)]

(14) For provisions authorizing the withdrawal of distilled spirits without payment of tax for use in certain research, development, or testing, see section 5214(a)(10).

[See main edition for text of (15)]

(As amended Pub. L. 95-176, §§ 3(c), 4(f), Nov. 14, 1977, 91 Stat. 1365, 1366.)

AMENDMENTS

1977—Par. (9). Pub. L. 95-176, § 3(c), struck out "manufacturing" after "customs" and inserted reference to section 5214(a)(9).

Par. (14). Pub. L. 95-176, § 4(f), substituted "withdrawal of distilled spirits without payment of tax for use in certain research, development, or testing, see section 5214(a)(10)" for "removal of samples free of tax for making tests or laboratory analyses, see section 5214(a)(9)".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 7 of Pub. L. 95-176 provided that: "The amendments made by this Act [enacting sections 5008(f)(5), 5178(a)(3)(D), 5207(a)(10), and 5214(a)(10), (b)(7) of this title, amending sections 5003(9), (14), 5004(a)(2)(B), (C), 5005(d), (e), 5008(d), 5025(b), (e)(7), 5062(b), 5066(a)(1), 5175(a), 5205(c)(2), 5214(a)(9), 5215, and 5234(a)(2) of this title, and redesignating as section 5207(a)(11) former section 5207(a)(10) of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Nov. 14, 1977]."

§ 5004. Lien for tax

(a) Distilled spirits subject to lien

[See main edition for text of (1)]

(2) Exceptions

The lien imposed by paragraph (1), or any similar lien imposed on the spirits under prior provisions of internal revenue law, shall terminate in the case of distilled spirits produced on premises qualified under internal revenue law for the production of distilled spirits when such distilled spirits are—

(A) withdrawn from bonded premises on determination of tax; or

(B) withdrawn from bonded premises free of tax under provisions of section 5214(a)(1), (2), or (3), or section 7510; or

(C) exported, deposited in a foreign-trade zone, used in the production of wine, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, deposited in a customs bonded warehouse, or used in certain research, development, or testing, as provided by law.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 95-176, § 4(c), Nov. 14, 1977, 91 Stat. 1366.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-176 struck out in subpar. (B) reference to par. (9) of section 5214(a), and in subpar. (C) substituted "a customs bonded warehouse" for "customs manufacturing bonded warehouses" and provided for termination of the lien for tax when the distilled spirits are used in certain research, development, or testing.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a)(2)(B), (C) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

§ 5005. Persons liable for tax

[See main edition for text of (a) to (c)]

(d) Withdrawals free of tax

All persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of such liability as to distilled spirits withdrawn free of tax under the provisions of section 5214(a)(1), (2), or (3), or under section 7510, at the time such spirits are so withdrawn from bonded premises.

(e) Withdrawals without payment of tax

(1) Liability for tax

Any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant without payment of tax, as provided in section 5214(a)(4), (5), (6), (7), (8), (9), or (10), shall be liable for the internal revenue tax on such distilled spirits, from the time of such withdrawal; and all persons liable for the tax on such distilled spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall, at the time of such withdrawal, be relieved of any such liability on the distilled spirits so withdrawn if the person withdrawing such spirits and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn.

(2) Relief from liability

All persons liable for the tax on distilled spirits under paragraph (1) of this subsection, or under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of any such liability at the time, as the case may be, the distilled spirits are exported, deposited in a foreign-trade zone, used in the production of wine, deposited in customs bonded warehouses, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, or used in certain research, development, or testing, as provided by law.

[*See main edition for text of (f)*]

(As amended Pub. L. 95-176, § 4(b), (d), Nov. 14, 1977, 91 Stat. 1366.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-176, § 4(d)(1), struck out reference to par. (9) of section 5214(a).

Subsec. (e)(1). Pub. L. 95-176, § 4(d)(2), inserted reference to pars. (9) and (10) of section 5214(a).

Subsec. (e)(2). Pub. L. 95-176, § 4(b), substituted "customs bonded warehouses" for "customs manufacturing bonded warehouses" and provided for relief from liability for tax on distilled spirits used in certain research, development, or testing.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsecs. (d) and (e) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

§ 5008. Abatement, remission, refund, and allowance for loss or destruction of distilled spirits

[*See main edition for text of (a) to (c)*]

(d) Distilled spirits returned to bonded premises

(1) General

Whenever any distilled spirits withdrawn from bonded premises on payment or determination of tax are returned to the bonded premises of a distilled spirits plant under section 5215(a), the Secretary shall abate, remit, or (without interest) credit or refund the tax imposed under section 5001(a)(1) (or the tax equal to such tax imposed under section 7652) on the spirits so returned.

(2) Distilled spirits returned to bonded premises for storage pending exportation

Whenever any distilled spirits are returned under section 5215(b) to the bonded premises of a distilled spirits plant, the Secretary shall (without interest) credit or refund the internal revenue tax found to have been paid or determined with respect to such distilled spirits. Such amount of tax shall be the same amount which would be allowed as a drawback under section 5062(b) on the exportation of such distilled spirits.

(3) Distilled spirits stamped and labeled as bottled in bond

Whenever any distilled spirits are returned under section 5215(c) to the bonded premises of a distilled spirits plant, the Secretary shall (without interest) credit or refund the tax imposed under section 5001(a)(1) on the spirits so returned.

(4) Limitation

No allowance under paragraph (1), (2), or (3) shall be made unless a claim is filed under such regulations as the Secretary may prescribe, by the proprietor of the distilled spirits plant to which the distilled spirits are returned within 6 months of the date of return.

[*See main edition for text of (e)*]

(f) Distilled spirits withdrawn without payment of tax

The provisions of subsection (a) shall be applicable to loss of distilled spirits occurring during transportation from bonded premises of a distilled spirits plant to—

(1) the port of export, in case of withdrawal under section 5214(a)(4);

(2) the customs manufacturing bonded warehouse, in case of withdrawal under section 5214(a)(6);

(3) the vessel or aircraft, in case of withdrawal under section 5214(a)(7);

(4) the foreign-trade zone, in case of withdrawal under section 5214(a)(8); and

(5) the customs bonded warehouse in the case of withdrawal under sections 5066 and 5214(a)(9).

The provisions of subsection (a) shall be applicable to loss of distilled spirits withdrawn from bonded premises without payment of tax under section 5214(a)(10) for certain research, development, or testing, until such distilled spirits are used as provided by law.

[*See main edition for text of (g) and (h)*]

(As amended Pub. L. 95-176, §§ 2(f), 4(e), Nov. 14, 1977, 91 Stat. 1364, 1366.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-176, § 2(f), reenacted par. (1) and substituted therein the heading "General" for "Allowance of tax" and "(or the tax equal to such tax imposed under section 7652)" for "or under section 7652"; added pars. (2) and (3); and redesignated as par. (4) provisions of former par. (2), inserting therein reference to allowance of claims under par. (2) or (3).

Subsec. (f)(5). Pub. L. 95-176, § 4(e), added par. (5).

EFFECTIVE DATE OF 1977 AMENDMENT

Enactment of subsec. (f)(5) and amendment of subsec. (d) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

SUBPART B—RECTIFICATION

§ 5025. Exemption from rectification tax

[*See main edition for text of (a)*]

(b) Production of gin and vodka

The tax imposed by section 5021 shall not apply to gin produced on bottling premises of distilled spirits plants by the redistillation of a pure spirit over juniper berries and other natural aromatics, or the extracted oils of such, or to vodka produced on bottling premises of distilled spirits plants from pure spirits in the manner authorized on bonded premises of distilled spirits plants.

[*See main edition for text of (c) and (d)*]

(e) Mingling of distilled spirits

Sections 5021, 5081, and 5082 shall not apply to—

[See main edition for text of (1) to (6)]

(7) the mingling on bonded premises of distilled spirits as authorized by section 5234(a)(2).

[See main edition for text of (f) to (m)]

(As amended Pub. L. 95-176, §§ 5(b), 6, Nov. 14, 1977, 91 Stat. 1366, 1367.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-176, § 6, exempted from the rectification tax production of gin from extracted oils of natural aromatics.

Subsec. (e)(7). Pub. L. 95-176, § 5(b), struck out "for further storage in bond" after "distilled spirits".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsecs. (b) and (e)(7) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

SUBPART C—WINES

§ 5042. Exemption from tax

(a) Tax-free production

[See main edition for text of (1)]

(2) Wine for personal or family use

Subject to regulations prescribed by the Secretary—

(A) Exemption

Any adult may, without payment of tax, produce wine for personal or family use and not for sale.

(B) Limitation

The aggregate amount of wine exempt from tax under this paragraph with respect to any household shall not exceed—

(i) 200 gallons per calendar year if there are 2 or more adults in such household, or

(ii) 100 gallons per calendar year if there is only 1 adult in such household.

(C) Adults

For purposes of this paragraph, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which wine may be sold to individuals, whichever is greater.

[See main edition for text of (3); (b)]

(As amended Pub. L. 95-458, § 2(a), Oct. 14, 1978, 92 Stat. 1255.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-458 substituted in heading "Wine for personal or family use" for "Family wine" and in text provision permitting an adult to produce 200 gallons of wine per calendar year if there are 2 or more adults in the household or 100 gallons of wine per calendar year if there is one adult in the household for provision which permitted the duly registered head of any family to produce an amount of wine not exceeding 200 gallons of wine per annum.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(c) of Pub. L. 95-458 provided that: "The amendments made by this section [amending sections 5042, 5051, 5053, 5054, 5092, 5222 and 5674 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 14, 1978]."

SUBPART D—BEER

§ 5051. Imposition and rate of tax

[See main edition for text of (a) and (b)]

(c) Illegally produced beer

The production of any beer at any place in the United States shall be subject to tax at the rate prescribed in subsection (a) and such tax shall be due and payable as provided in section 5054(a)(3) unless—

(1) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(2) such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

(As amended Pub. L. 95-458, § 2(b)(2)(A), Oct. 14, 1978, 92 Stat. 1256.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-458 added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-458 effective on the first day of the first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95-458 set out as an Effective Date of 1978 Amendment note under section 5042 of this title.

§ 5053. Exemptions

[See main edition for text of (a) to (d)]

(e) Beer for personal or family use

Subject to regulation prescribed by the Secretary, any adult may, without payment of tax, produce beer for personal or family use and not for sale. The aggregate amount of beer exempt from tax under this subsection with respect to any household shall not exceed—

(1) 200 gallons per calendar year if there are 2 or more adults in such household, or

(2) 100 gallons per calendar year if there is only 1 adult in such household.

For purposes of this subsection, the term "adult" means an individual who has attained 18 years of age, or the minimum age (if any) established by law applicable in the locality in which the household is situated at which beer may be sold to individuals, whichever is greater.

(f) Removal as supplies for certain vessels and aircraft

For exemption as to supplies for certain vessels and aircraft, see section 309 of the Tariff Act of 1930, as amended (19 U.S.C. 1309).

(As amended Pub. L. 95-458, § 2(b)(1), Oct. 14, 1978, 92 Stat. 1255.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-458 added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 95-458 redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-458 effective on the first day of the first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95-458 set out as an Effective Date of 1978 Amendment note under section 5042 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5051, 5054, 5092, 5222, 5401, 5674 of this title.

§ 5054. Determination and collection of tax on beer

(a) Time of determination

[See main edition for text of (1) and (2)]

(3) Illegally produced beer

The tax on any beer produced in the United States shall be due and payable immediately upon production unless—

(A) such beer is produced in a brewery qualified under the provisions of subchapter G, or

(B) such production is exempt from tax under sections [1] 5053(e) (relating to beer for personal or family use).

[See main edition for text of (4); (b) and (c)]

(As amended Pub. L. 95-458, § 2(b)(2)(B), Oct. 14, 1978, 92 Stat. 1256.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-458 inserted provision excluding from tax the beer exempt from tax under section 5053(e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-458 effective on the first day of the first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95-458 set out as an Effective Date of 1978 Amendment note under section 5042 of this title.

SUBPART E—GENERAL PROVISIONS

Sec.
5064. Losses resulting from disaster, vandalism, or malicious mischief.

AMENDMENTS

1978—Pub. L. 95-423, § 1(b), Oct. 6, 1978, 92 Stat. 936, substituted "Losses resulting from disaster, vandalism, or malicious mischief" for "Losses caused by disaster" in item 5064.

§ 5062. Refund and drawback in case of exportation

[See main edition for text of (a)]

(b) Drawback

On the exportation of distilled spirits or wines manufactured, produced, bottled, or packaged in casks or other bulk containers in the United States on which an internal revenue tax has been paid or determined, and which are contained in any cask or other bulk container, or in bottles packed in cases or other containers, there shall be allowed, under regulations prescribed by the Secretary, a drawback equal in amount to the tax found to have been paid or determined on such distilled spirits or wines. In the case of distilled spirits, the preceding sentence shall not apply unless the claim for drawback is filed by the bottler or packager of the spirits and unless such spirits have been stamped or restamped, and marked, especially for export, under regulations prescribed by the Secretary. The Secretary is authorized to prescribe regulations governing the determination and payment or crediting of drawback of internal revenue tax on spirits and wines eligible for drawback under this subsection, including the requirements of such notices, bonds, bills of lading, and other evidence indicating payment or determination of tax and exportation as shall be deemed necessary.

[See main edition for text of (c)]

(As amended Pub. L. 95-176, § 1, Nov. 14, 1977, 91 Stat. 1363.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-176 substituted in first sentence "manufactured, produced, bottled, or packaged in casks or other bulk containers" and "other bulk container" for "manufactured or produced" and "package" and in last sentence "spirits and wines eligible for drawback under this subsection, including the requirements" for "domestic distilled spirits and wines, including the requirement".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (b) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5008, 5009, 5066, 5215 of this title.

§ 5064. Losses resulting from disaster, vandalism, or malicious mischief

(a) Payments

The Secretary, under such regulations as he may prescribe, shall pay (without interest) an amount equal to the amount of the internal revenue taxes paid or determined and customs duties paid on distilled spirits, wines, rectified products, and beer previously withdrawn, which were lost, rendered unmarketable, or condemned by a duly authorized official by reason of—

(1) fire, flood, casualty, or other disaster, or

(2) breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief,

if such disaster or damage occurred in the United States and if such distilled spirits, wines, rectified products, or beer were held and intended for sale at the time of such disaster or other damage. The payments provided for in this section shall be made to the person holding such distilled spirits, wines, rectified products, or beer for sale at the time of such disaster or other damage.

(b) Claims

(1) Period for making claim; proof

No claim shall be allowed under this section unless—

[1] So in original. Probably should be "section".

(A) filed within 6 months after the date on which such distilled spirits, wines, rectified products, or beer were lost, rendered unmarketable, or condemned by a duly authorized official, and

(B) the claimant furnishes proof satisfactory to the Secretary that the claimant—

(i) was not indemnified by any valid claim of insurance or otherwise in respect of the tax, or tax and duty, on the distilled spirits, wines, rectified products, or beer covered by the claim; and

(ii) is entitled to payment under this section.

(2) Minimum claim

Except as provided in paragraph (3)(A), no claim of less than $250 shall be allowed under this section with respect to any disaster or other damage (as the case may be).

(3) Special rules for major disasters

If the President has determined under the Disaster Relief Act of 1974 that a "major disaster" (as defined in such Act) has occurred in any part of the United States, and if the disaster referred to in subsection (a)(1) occurs in such part of the United States by reason of such major disaster, then—

(A) paragraph (2) shall not apply, and

(B) the filing period set forth in paragraph (1)(A) shall not expire before the day which is 6 months after the date on which the President makes the determination that such major disaster has occurred.

(4) Regulations

Claims under this section shall be filed under such regulations as the Secretary shall prescribe.

[See main edition for text of (c) to (e)]

(As amended Pub. L. 95–423, § 1(a), Oct. 6, 1978, 92 Stat. 935.)

REFERENCES IN TEXT

The Disaster Relief Act of 1974, referred to in subsec. (b)(3), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

1978—Pub. L. 95–423 substituted "Losses resulting from disaster, vandalism, or malicious mischief" for "Losses caused by disaster" in section catchline.

Subsec. (a). Pub. L. 95–423 substituted provisions authorizing the Secretary, under such regulations as he may prescribe, to pay the prescribed amount on distilled spirits, etc., lost, rendered unmarketable, or condemned by a duly authorized official by reason of fire, flood, casualty or other disaster, breakage, destruction, or other damage (but not including theft) resulting from vandalism or malicious mischief, for provisions authorizing such payment where the President has determined under the Disaster Relief Act of 1974 that a "major disaster" has occurred, and that distilled spirits, etc., were lost, rendered unmarketable, or condemned by a duly authorized official by reason of such disaster occurring after June 30, 1959.

Subsec. (b). Pub. L. 95–423 redesignated par. (1) as (1)(A), and in such par. (1)(A) as redesignated, substituted provisions disallowing a claim unless filed within 6 months after such distilled spirits, etc., were lost, rendered unmarketable or condemned, for provisions disallowing a claim unless filed within 6 months after the President determined that such disaster occurred, and added par. (1)(B); in par. (2) substituted provisions limiting claims to no less than $250, except as provided in par. (3)(A), for provisions demanding proof that claimant was not indemnified by any valid claim of insurance and that he is entitled to payment under this section; and added pars. (3) and (4).

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 1(c) of Pub. L. 95–423 provided that: "The amendments made by this section [amending subsecs. (a) and (b) of this section] shall apply to disasters (or other damage) occurring on or after the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [Oct. 6, 1978]."

§ 5066. Distilled spirits for use of foreign embassies, legations, etc.

(a) Entry into customs bonded warehouses

(1) Bottled distilled spirits withdrawn from bonded premises

Under such regulations as the Secretary may prescribe, distilled spirits bottled in bond for export under the provisions of section 5233, or bottled distilled spirits returned to bonded premises under section 5215(b), may be withdrawn from bonded premises as provided in section 5214(a)(4) for transfer to customs bonded warehouses in which imported distilled spirits are permitted to be stored in bond for entry therein pending withdrawal therefrom as provided in subsection (b). For the purposes of this chapter, the withdrawal of distilled spirits from bonded premises under the provisions of this paragraph shall be treated as a withdrawal for exportation and all provisions of law applicable to distilled spirits withdrawn for exportation under the provisions of section 5214(a)(4) shall apply with respect to spirits withdrawn under this paragraph.

[See main edition for text of (2) and (3); (b) to (d)]

(As amended Pub. L. 95–176, § 2(d), Nov. 14, 1977, 91 Stat. 1364.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95–176 substituted par. (1) heading "Bottled distilled spirits withdrawn from bonded premises" for "Distilled spirits bottled in bond for export" and authorized withdrawal of bottled distilled spirits returned to bonded premises under section 5215(b) as provided in section 5214(a)(4).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a)(1) by Pub. L. 95–176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95–176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5008, 5214 of this title.

PART II—OCCUPATIONAL TAX

SUBPART B—BREWER

§ 5092. Definition of brewer

Every person who brews beer (except a person who produces only beer exempt from tax under section 5053(e)) and every person who produces beer for sale shall be deemed to be a brewer.

(As amended Pub. L. 95-458, § 2(b)(3), Oct. 14, 1978, 92 Stat. 1256.)

AMENDMENTS

1978—Pub. L. 95-458 inserted provision which excludes from definition of brewer a person who produces beer exempt from tax under section 5053(e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-458 effective on the first day of the first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95-458 set out as an Effective Date 1978 Amendment note under section 5042 of this title.

Subchapter B—Qualification Requirements for Distilled Spirits Plants

§ 5175. Export bonds

(a) Requirements

No distilled spirits shall be withdrawn from bonded premises for exportation, or for transfer to a customs bonded warehouse for storage therein pending exportation, without payment of tax unless the exporter has furnished bond to cover such withdrawal under such regulations and conditions, and in such form and penal sum, as the Secretary may prescribe.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 95-176, § 3(b), Nov. 14, 1977, 91 Stat. 1365.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-176 required export bonds for withdrawals from bonded premises, without payment of tax, for transfer to a customs bonded warehouse for storage therein pending exportation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

§ 5178. Premises of distilled spirits plants

(a) Location, construction, and arrangement

[See main edition for text of (1) and (2)]

(3) Bonded warehousing facilities

[See main edition for text of (A) to (C)]

(D) A proprietor who has established facilities for the storage on bonded premises of distilled spirits under subparagraph (C) may establish a portion of such premises as an export storage facility for the storage of distilled spirits returned to bonded premises under section 5215(b).

[See main edition for text of (4) and (5); (b) and (c)]

(As amended Pub. L. 95-176, § 2(b), Nov. 14, 1977, 91 Stat. 1364.)

AMENDMENTS

1977—Subsec. (a)(3)(D). Pub. L. 95-176 added subpar. (D).

EFFECTIVE DATE OF 1977 AMENDMENT

Enactment of subsec. (a)(3)(D) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5202, 5215, 5233, 5235, 5511, 5601 of this title.

Subchapter C—Operation of Distilled Spirits Plants

PART I—GENERAL PROVISIONS

§ 5205. Stamps

[See main edition for text of (a) and (b)]

(c) Stamps for containers of distilled spirits withdrawn for exportation

[See main edition for text of (1)]

(2) Exportation with benefit of drawback

The Secretary may require any container of distilled spirits bottled or packaged especially for export with benefit of drawback to be stamped by a stamp under such regulations as he may prescribe. This paragraph shall also apply to every container of distilled spirits returned to the bonded premises under the provisions of section 5215(b).

[See main edition for text of (d) to (i)]

(As amended Pub. L. 95-176, § 2(c), Nov. 14, 1977, 91 Stat. 1364.)

AMENDMENTS

1977—Subsec. (c)(2). Pub. L. 95-176 made par. (2) applicable to every container of distilled spirits returned to the bonded premises under the provisions of section 5215(b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (c)(2) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

§ 5207. Records and reports

(a) Records of distillers and bonded warehousemen

Every distiller and every bonded warehouseman shall keep records in such form and manner as the Secretary shall by regulations prescribe of—

[See main edition for text of (1) to (8)]

(9) the kind and quantity of denatured distilled spirits removed,

(10) the kind and quantity of distilled spirits returned to bonded premises, and

(11) such additional information as may by regulations be required.

[See main edition for text of (b) to (e)]

(As amended Pub. L. 95-176, § 2(e), Nov. 14, 1977, 91 Stat. 1364.)

AMENDMENTS

1977—Subsec. (a)(10). Pub. L. 95-176, § 2(e)(3), added par. (10). Former par. (10) redesignated (11).

Subsec. (a)(11). Pub. L. 95-176, § 2(e)(2), redesignated former par. (10) as (11).

EFFECTIVE DATE OF 1977 AMENDMENT

Enactment of subsec. (a)(10) and redesignation as subsec. (a)(11) of former subsec. (a)(10) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

PART II—OPERATIONS ON BONDED PREMISES

SUBPART A—GENERAL

§ 5214. Withdrawal of distilled spirits from bonded premises free of tax or without payment of tax

(a) Purposes

Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to such regulations as the Secretary shall prescribe, be withdrawn from the bonded premises of any distilled spirits plant in approved containers—

[*See main edition for text of (1) to (8)*]

(9) without payment of tax, in the case of distilled spirits bottled in bond for export under section 5233 or distilled spirits returned to bonded premises under section 5215(b), for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse from which distilled spirits may be exported, and distilled spirits transferred to a customs bonded warehouse under this paragraph shall be entered, stored, and accounted for under such regulations and bonds as the Secretary may prescribe; or

(10) without payment of tax by a proprietor of bonded premises for use in research, development, or testing (other than consumer testing or other market analysis) of processes, systems, materials, or equipment, relating to distilled spirits or distillery operations, under such limitations and conditions as to quantities, use, and accountability as the Secretary may by regulations require for the protection of the revenue.

(b) Cross references

[*See main edition for text of (1) to (6)*]

(7) For provisions relating to distilled spirits for use of foreign embassies, legations, etc., see section 5066.

(As amended Pub. L. 95-176, §§ 3(a), (d), 4(a), Nov. 14, 1977, 91 Stat. 1365.)

AMENDMENTS

1977—Subsec. (a)(9). Pub. L. 95-176, § 3(a), substituted provisions for withdrawal of distilled spirits from bonded premises without payment of tax where the distilled spirits are bottled in bond for export or are returned to bonded premises for transfer (for the purpose of storage pending exportation) to any customs bonded warehouse for exportation and requiring the transferred distilled spirits to be entered, stored, and accounted for for prior provision for tax free withdrawals for use as samples in making tests or laboratory analyses.

Subsec. (a)(10). Pub. L. 95-176, § 4(a), added par. (10).

Subsec. (b)(7). Pub. L. 95-176, § 3(d), added par. (7).

EFFECTIVE DATE OF 1977 AMENDMENT

Enactment of subsecs. (a)(10) and (b)(7) and amendment of subsec. (a)(9) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5001, 5002, 5003, 5004, 5005, 5008, 5023, 5025, 5066, 5174, 5205, 5211, 5215, 5244, 5271, 5273, 5275, 5314, 5607 of this title.

§ 5215. Return of tax determined distilled spirits to bonded premises

(a) General

On such application and under such regulations as the Secretary may prescribe, distilled spirits withdrawn from bonded premises on payment or determination of tax (other than products to which any alcoholic ingredients other than such distilled spirits have been added) may be returned to the bonded premises of a distilled spirits plant. Such returned distilled spirits shall be destroyed, denatured, or redistilled, or shall be mingled as authorized in section 5234(a)(1) (other than subparagraph (C) thereof).

(b) Distilled spirits returned to bonded premises for storage pending exportation

On such application and under such conditions as the Secretary may by regulations prescribe, distilled spirits which would be eligible for allowance of drawback under section 5062(b) on exportation, may be returned by the bottler or packager of such distilled spirits to an export storage facility on the bonded premises of the distilled spirits plant where bottled or packaged, solely for the purpose of storage pending withdrawal without payment of tax under section 5214(a)(4), (7), (8), or (9), or free of tax under section 7510.

(c) Distilled spirits stamped and labeled as bottled in bond

On such application and under such regulations as the Secretary may prescribe, a proprietor of bonded premises who has bottled distilled spirits under section 5178(a)(4)(A)(ii), which are stamped and labeled as bottled in bond for domestic consumption, may return cases of such bottled distilled spirits to appropriate storage facilities on the bonded premises of the distilled spirits plant where bottled for storage pending withdrawal for any purpose for which distilled spirits bottled under section 5178(a)(4)(A)(i) may be withdrawn from bonded premises.

(d) Applicability of chapter to distilled spirits returned to bonded premises

Except as otherwise provided in this section, all provisions of this chapter applicable to dis-

tilled spirits in bond shall be applicable to distilled spirits returned to bonded premises under the provisions of this section on such return.

(e) Cross references

(1) For provisions relating to the remission, abatement, credit, or refund of tax on distilled spirits returned to bonded premises under this section, see section 5008(d).

(2) For provisions relating to the establishment of an export storage facility on the bonded premises of a distilled spirits plant, see section 5178(a)(3)(D).

(As amended Pub. L. 95-176, § 2(a), Nov. 14, 1977, 91 Stat. 1363.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-176 reenacted existing provisions but deleted last sentence relating to applicability of chapter to distilled spirits returned to bonded premises, now covered in subsec. (d) of this section.

Subsec. (b). Pub. L. 95-176 added subsec. (b). Former subsec. (b) redesignated (e).

Subsec. (c). Pub. L. 95-176 added subsec. (c).

Subsec. (d). Pub. L. 95-176 redesignated last sentence of former subsec. (a) as subsec. (d) and inserted the introductory phrase "Except as otherwise provided in this section,".

Subsec. (e). Pub. L. 95-176 redesignated former subsec. (b) as par. (1) and added par. (2).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5008, 5066, 5178, 5205, 5214, 5223, 5612 of this title.

SUBPART B—PRODUCTION

§ 5222. Production, receipt, removal, and use of distilling materials

(a) Production, removal, and use

[See main edition for text of (1)]

(2) Nothing in this subsection shall be construed to apply to—

[See main edition for text of (A) and (B)]

(C) products exempt from tax under the provisions of section 5042 or 5053(e); or

[See main edition for text of (D); (b) to (d)]

(As amended Pub. L. 95-458, § 2(b)(4), Oct. 14, 1978, 92 Stat. 1256.)

AMENDMENTS

1978—Subsec. (a)(2)(C). Pub. L. 95-458 inserted reference to section 5053(e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-458 effective on the first day of the first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95-458 set out as an Effective Date of 1978 Amendment note under section 5042 of this title.

SUBPART C—STORAGE

§ 5233. Bottling of distilled spirits in bond

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5066, 5178, 5205, 5214, 5232, 5235, 5612 of this title.

§ 5234. Mingling and blending of distilled spirits

(a) Mingling of distilled spirits on bonded premises

[See main edition for text of (1)]

(2) Consolidation of packages

Under such regulations as the Secretary shall prescribe, distilled spirits—

(A) of the same kind,

(B) distilled at the same distillery,

(C) distilled by the same proprietor (under his own or any trade name), and

(D) which have been stored in internal revenue bond in the same kind of cooperage for not less than 4 years (or 2 years in the case of rum or brandy),

may, within 20 years of the date of original entry for deposit of the spirits, be mingled on bonded premises. Where distilled spirits produced in different distilling seasons are mingled under this paragraph, the mingled spirits shall consist of not less than 10 percent of spirits of each such season. No spirits mingled under the provisions of this paragraph shall be again mingled under the provisions thereof until at least one year has elapsed since the last prior mingling. For purposes of this chapter, the date of original entry for deposit of the spirits mingled under the provisions of this paragraph shall be the date of original entry for deposit of the youngest spirits contained in the mingled spirits, and the distilling season of such mingled spirits shall be the distilling season of the youngest spirits contained therein. Notwithstanding any other provisions of law, distilled spirits mingled under this paragraph may be bottled and labeled the same as if such spirits had not been so mingled. No statement claiming or implying age in excess of that of the youngest spirits contained in the mingled spirits shall be made on any stamp or label or in any advertisement.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 95-176, § 5(a), Nov. 14, 1977, 91 Stat. 1366.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-176 struck from the heading "for further storage in bond" after "packages" and "for further storage in bond in as many as necessary of the same packages in which the spirits were stored before consolidation" after "bonded premises" in first sentence.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a)(2) by Pub. L. 95-176 effective on the first day of the first calendar month beginning more than 90 days after Nov. 14, 1977, see section 7 of Pub. L. 95-176, set out as an Effective Date of 1977 Amendment note under section 5003 of this title.

Subchapter G—Breweries

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 5054, 5674 of this title.

Subchapter J—Penalties, Seizures, and Forfeitures Relating to Liquors

PART III—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO BEER AND BREWING

Sec.
5674. Penalty for unlawful production or removal of beer.

AMENDMENTS

1978—Pub. L. 95-458, § 2(b)(5)(B), Oct. 14, 1978, 92 Stat. 1257, substituted "production or removal" for "removal" in item 5674.

§ 5674. Penalty for unlawful production or removal of beer

(a) Unlawful production

Any person who brews beer or produces beer shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, unless such beer is brewed or produced in a brewery qualified under subchapter G or such production is exempt from tax under section 5053(e) (relating to beer for personal or family use).

(b) Unlawful removal

Any brewer or other person who removes or in any way aids in the removal from any brewery of beer without complying with the provisions of this chapter or regulations issued pursuant thereto shall be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(As amended Pub. L. 95-458, § 2(b)(5)(A), Oct. 14, 1978, 92 Stat. 1256.)

AMENDMENTS

1978—Pub. L. 95-458 substituted in section catchline "production or removal" for "removal", redesignated existing provision as subsec. (b), and added subsec. (a).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-458 effective on the first day of the first calendar month beginning more than 90 days after Oct. 14, 1978, see section 2(c) of Pub. L. 95-458 set out as an Effective Date of 1978 Amendment note under section 5042 of this title.

CHAPTER 52—CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6103, 6207, 6423, 7328 of this title; title 18 section 2341.

CHAPTER 53—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Subchapter B—General Provisions and Exemptions

PART I—GENERAL PROVISIONS

§ 5845. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5685, 5801, 5811 of this title; title 18 sections 844, 922, 924, 925, 2344; title 40 section 304m.

Subtitle F—Procedure and Administration

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 408, 874, 911, 2621, 3402, 5067, 5148, 5560 of this title; title 42 sections 401, 1395i; title 48 section 1421i.

CHAPTER 61—INFORMATION AND RETURNS

Subchapter A—Returns and Records

PART I—RECORDS, STATEMENTS, AND SPECIAL RETURNS

§ 6001. Notice or regulations requiring records, statements, and special returns

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Whenever in the judgment of the Secretary it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary deems sufficient to show whether or not such person is liable for tax under this title. The only records which an employer shall be required to keep under this section in connection with charged tips shall be charge receipts and copies of statements furnished by employees under section 6053(a).

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 501(a), 92 Stat. 2878.)

AMENDMENTS

1978—Pub. L. 95-600 added provision relating to the only records which an employer shall be required to keep in connection with charged tips.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 501(c) of Pub. L. 95-600 provided that: "The amendments made by this section [amending sections 6001 and 6041(c) and (d) of this title] shall apply to payments made after December 31, 1978."

PART II—TAX RETURNS OR STATEMENTS

SUBPART A—GENERAL REQUIREMENT

§ 6011. General requirement of return, statement, or list

[*See main edition for text of* (a) *to* (c)]

(d) Authority to require information concerning section 912 allowances

The Secretary may by regulations require any individual who receives allowances which are excluded from gross income under section 912 for any taxable year to include on his return of the taxes imposed by subtitle A for such taxable year such information with respect to the amount and type of such allowances as the Secretary determines to be appropriate.

(e) Income, estate, and gift taxes

For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

(As amended Nov. 8, 1978, Pub. L. 95-615, § 207(c), 92 Stat. 3108.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-615 added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 95-615 redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

STUDY OF SIMPLIFICATION OF TAX RETURNS

Pub. L. 95-600, title V, § 551, Nov. 6, 1978, 92 Stat. 2890, provided that:

"(a) STUDY.—The Secretary of the Treasury shall conduct a full and complete study and investigation with respect to—

"(1) provisions of the Internal Revenue Code of 1954 [this title] which, due to their complexity, may hamper the ability of individuals to prepare accurate and complete Federal income tax returns, and

"(2) methods of simplifying Federal income tax return forms and instructions accompanying such forms.

"(b) TASK FORCE.—

"(1) IN GENERAL.—The Secretary of the Treasury shall establish a task force to assist him in the conduct of the study and investigation under subsection (a).

"(2) REPORTS OF TASK FORCE.—The task force shall report from time to time on its progress directly to the Secretary and shall submit a final report to the Secretary which includes its findings with respect to such study and investigation and any recommendations with respect thereto. Such final report shall be submitted by such time as is necessary to enable the Secretary to file the report called for in subsection (c) of this section.

"(3) AUTHORITY TO HIRE.—The Secretary is authorized to appoint such employees, not in excess of 10, as may be necessary to carry out the functions of the task force without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, except that such employees shall not be paid at a rate in excess of the annual rate of pay under grade GS-18 of the General Schedule under section 5332 of such title 5.

"(c) REPORT.—The Secretary, after studying the reports and recommendations of the task force under subsection (b), shall, not later than 2 years after the date of the enactment of this Act [Nov. 6, 1978], submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a final report on the study and investigation conducted under this section, together with such recommendations for legislation as he finds necessary."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 911 of this title; title 42 section 405.

SUBPART B—INCOME TAX RETURNS

§ 6012. Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of $1,000 or more, except that a return shall not be required of an individual (other than an individual described in subparagraph (C))—

(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than $3,300,

(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than $4,400, or

(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than $5,400, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by $1,000 in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by $1,000 for each additional personal exemption to which the individual or his spouse is entitled under section 151(c).

(C) The exception under subparagraph (A) shall not apply to—

(i) a nonresident alien individual;

(ii) a citizen of the United States entitled to the benefits of section 931;

(iii) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period;

(iv) an individual who has income (other than earned income) of $1,000 or more and who is described in section 63(e)(1)(D); or

(v) an estate or trust.

[See main edition for text of (2) to (7)]

(8) Every individual who receives payments during the calendar year in which the taxable year begins under section 3507 (relating to advance payment of earned income credit).

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

[See main edition for text of (b)]

(c) Certain income earned abroad or from sale of residence

For purposes of this section, gross income shall be computed without regard to the exclusion provided for in section 121 (relating to one-time exclusion of gain from sale of principal residence by individual who has attained age 55) and without regard to the exclusion provided for in section 911 (relating to income earned by employees in certain camps).

[See main edition for text of (d)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 104, 91 Stat. 139; Nov. 6, 1978, Pub. L. 95-600, title I, §§ 101(c), 102(b)(1), 105(d), title IV, § 404(c)(8), 92 Stat. 2770, 2771, 2776, 2870; Nov. 8, 1978, Pub. L. 95-615, § 202(f)(5), 92 Stat. 3100.)

AMENDMENTS

1978—Subsec. (a)(1)(A). Pub. L. 95-600, §§ 101(c), 102(b)(1), substituted in provision preceding cl. (i), "$1,000" for "$750", in cl. (i), "$3,050" for "$2,950" and "$3,300" for "$3,050", in cl. (ii), "$4,150" for "$3,950" and "$4,400" for "$4,150", and in cl. (iii), "$4,900" for "$4,700" and "$5,400" for "$4,900".

Subsec. (a)(8). Pub. L. 95-600, § 105(d), added subsec. (a)(8).

Subsec. (c). Pub. L. 95-615 substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)".

Pub. L. 95-600, § 404(c)(8), added provisions relating to a one-time exclusion and principal residence, and substituted "55" for "65".

1977—Subsec. (a)(1)(A). Pub. L. 95-30 substituted "(other than an individual described in subparagraph (C))" for "(other than an individual referred to in section 142(b))" in the provisions preceding cl. (i), "$2,950" for "$2,450" in cl. (i), "$3,950" for "$2,850" in cl. (ii), and "$4,700" for "$3,600" in cl. (iii).

Subsec. (a)(1)(B). Pub. L. 95-30 re-enacted subsec. (a)(1)(B) without change.

Subsec. (a)(1)(C). Pub. L. 95-30 substituted provisions that the exception under subparagraph (A) shall not apply to a nonresident alien individual, a citizen of the United States entitled to the benefits of section 931, an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period, an individual who has income (other than earned income) of $750 or more and who is described in section 63(e)(1)(D), or an estate or trust, for provisions requiring that a return with respect to income taxes under subtitle A be made by every individual having for the taxable year a gross income of $750 or more and to whom section 141(e) (relating to limitations in case of certain dependent taxpayers) applied.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 101(c) of Pub. L. 95-600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 101(f)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1 of this title.

Amendment by section 102(b)(1) of Pub. L. 95-600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 102(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 151 of this title.

Amendment by section 105(d) of Pub. L. 95-600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 105(g)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 43 of this title.

Amendment by section 404(c)(8) of Pub. L. 95-600 applicable to sales or exchanges after July 26, 1978, in taxable years ending after such date, see section 404(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 121 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 911, 6032, 6037, 6039B, 6062, 6072, 6513 of this title; title 38 section 503.

§ 6013. Joint returns of income tax by husband and wife

[*See main edition for text of* (a)]

(b) Joint return after filing separate return

[*See main edition for text of* (1) *and* (2)]

(3) When return deemed filed

(A) Assessment and collection

For purposes of section 6501 (relating to periods of limitations on assessment and collection), and for purposes of section 6651 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(i) Where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(ii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than $1,000 of gross income ($2,000 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

(iii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of $1,000 or more ($2,000 in case such spouse was 65 or over) for such taxable year—on the date of the filing of such joint return.

[*See main edition for text of* (B), (4) *and* (5); (c) *to* (f)]

(g) Election to treat nonresident alien individual as resident of the United States

(1) In general

A nonresident alien individual with respect to whom this subsection is in effect for the taxable year shall be treated as a resident of the United States—

(A) for purposes of chapters 1 and 5 for all of such taxable year, and

(B) for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year.

(2) Individuals with respect to whom this subsection is in effect

This subsection shall be in effect with respect to any individual who, at the close of the taxable year for which an election under this subsection was made, was a nonresident

alien individual married to a citizen or resident of the United States, if both of them made such election to have the benefits of this subsection apply to them.

[See main edition for text of (3) and (4)]

(5) Termination by Secretary

The Secretary may terminate any election under this subsection for any taxable year if he determines that either spouse has failed—

[See main edition for text of (A) to (C)]

as may be reasonably necessary to ascertain the amount of liability for taxes under chapters 1 and 5 of either spouse for such taxable year.

[See main edition for text of (6)]

(h) Joint return, etc., for year in which nonresident alien becomes resident of United States

(1) In general

If—

[See main edition for text of (A) to (C)]

then the individual referred to in subparagraph (A) shall be treated as a resident of the United States for purposes of chapters 1 and 5 for all of such taxable year, and for purposes of chapter 24 (relating to wage withholding) for payments of wages made during such taxable year.

[See main edition for text of (2)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, § 102(b)(2), title VII, § 701(u)(15)(A)-(C), (16)(A), 92 Stat. 2771, 2919, 2920.)

AMENDMENTS

1978—Subsec. (b)(3)(A). Pub. L. 95-600, 102(b)(2), increased the exemptions wherever appearing from $750 and $1500 to $1,000 and $2,000, respectively, with respect to taxable years beginning after Dec. 31, 1978.

Subsec. (g)(1). Pub. L. 95-600, § 701(u)(15)(A), amended subsec. (g)(1) generally, designating existing provisions as introductory material and par. (A), and in such par. (A) adding reference to chapter 5, and adding par. (2).

Subsec. (g)(2). Pub. L. 95-600, § 701(u)(16)(A), substituted "who, at the close of the taxable year for which an election under this subsection was made," for "who, at the time an election was made under this subsection,".

Subsec. (g)(5). Pub. L. 95-600, § 701(u)(15)(B), substituted "chapters 1 and 5" for "chapter 1".

Subsec. (h)(1). Pub. L. 95-600, § 701(u)(15)(C), substituted "chapters 1 and 5" for "chapter 1", and added provision relating to chapter 24 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 102(b)(2) of Pub. L. 95-600 effective with respect to taxable years beginning after Dec. 31, 1978, see section 102(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 151 of this title.

Section 701(u)(15)(E) of Pub. L. 95-600 provided that: "The amendments made by this paragraph [amending subsecs. (g)(1), (5) and (h)(1) of this section and section 6401(b) of this title]—

"(i) to the extent that they relate to chapter 1 or 5 of the Internal Revenue Code of 1954 [sections 1 et seq. and 1491 et seq. of this title, respectively], shall apply to taxable years ending on or after December 31, 1975, and

"(ii) to the extent that they relate to wage withholding under chapter 24 of such Code [section 3401 et seq. of this title], shall apply to remuneration paid on or after the first day of the first month which begins more than 90 days after the date of the enactment of this Act [Nov. 6, 1978]."

Section 701(u)(16)(B) of Pub. L. 95-600 provided that: "The amendment made by subparagraph (A) [amending subsec. (g)(2) of this section] shall apply to taxable years beginning after December 31, 1975."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 2, 41, 43, 44, 63, 85, 105, 121, 151, 165, 179, 213, 692, 1244, 6012, 6017, 6072, 6401, 6428, 6501, 6511, 6653, 7508 of this title.

§ 6014. Income tax return—Tax not computed by taxpayer

(a) Election by taxpayer

An individual who does not itemize his deductions and who does not have an unused zero bracket amount (determined under section 63(e)), whose gross income is less than $10,000 and includes no income other than remuneration for services performed by him as an employee, dividends or interest, and whose gross income other than wages, as defined in section 3401(a), does not exceed $100, shall at his election not be required to show on the return the tax imposed by section 1. Such election shall be made by using the form prescribed for purposes of this section. In such case the tax shall be computed by the Secretary who shall mail to the taxpayer a notice stating the amount determined as payable.

(b) Regulations

The Secretary shall prescribe regulations for carrying out this section, and such regulations may provide for the application of the rules of this section—

(1) to cases where the gross income includes items other than those enumerated by subsection (a),

(2) to cases where the gross income from sources other than wages on which the tax has been withheld at the source is more than $100,

(3) to cases where the gross income is $10,000 or more, or

(4) to cases where the taxpayer itemizes his deductions or has an unused zero bracket amount.

Such regulations shall provide for the application of this section in the case of husband and wife, including provisions determining when a joint return under this section may be permitted or required, whether the liability shall be joint and several, and whether one spouse may make return under this section and the other without regard to this section.

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(13), (14), 91 Stat. 134.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-30, § 101(d)(13), substituted "An individual who does not itemize his deductions and who does not have an unused zero bracket amount (determined under section 63(e)), whose gross income" for "An individual entitled to take the standard deduction provided by section 141 (other than an individual described in section 141(e)) whose gross

income" and struck out "and shall constitute an election to take the standard deduction" following "Such election shall be made by using the form prescribed for purposes of this section".

Subsec. (b)(4). Pub. L. 95-30, § 101(d)(14), substituted "itemizes his deductions or has an unused zero bracket amount" for "does not elect the standard deduction or where the taxpayer elects the standard deduction but is subject to the provision of section 141(e) (relating to limitations in case of certain dependent taxpayers)".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 6151, 6211 of this title.

§ 6015. Declaration of estimated income tax by individuals

[See main edition for text of (a) and (b)]

(c) Estimated tax

For purposes of this title, in the case of an individual, the term "estimated tax" means—

(1) the amount which the individual estimates as the amount of the income tax imposed by chapter 1 for the taxable year (other than the tax imposed by section 55 or 56), plus

[See main edition for text of (2) and (3); (d) to (i)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title IV, § 421(e)(7), 92 Stat. 2876.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95-600 substituted "section 55 or 56" for "section 56".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

SUBPART C—ESTATE AND GIFT TAX RETURNS

§ 6019. Gift tax returns

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2035, 6075 of this title.

PART III—INFORMATION RETURNS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 274, 6103, 6531 of this title; title 42 section 432.

SUBPART A—INFORMATION CONCERNING PERSONS SUBJECT TO SPECIAL PROVISIONS

Sec.
6039B. Return of general stock ownership corporation.

AMENDMENTS

1978—Pub. L. 95-600, title VI, § 601(c)(2), Nov. 6, 1978, 92 Stat. 2897, added item 6039B.

§ 6031. Return of partnership income

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6063, 6072, 6698 of this title.

§ 6039A. Information regarding carryover basis property acquired from a decedent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6698 of this title.

§ 6039B. Return of general stock ownership corporation

Every general stock ownership corporation (as defined in section 1391) which makes the election provided by section 1392 shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the amount of investment credit or additional tax, as the case may be, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, and such other information, for the purpose of carrying out the provisions of subchapter U of chapter 1, as the Secretary may by regulation prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012. Every GSOC shall file an annual report with the Secretary summarizing its operations for such year.

(Added Pub. L. 95-600, title VI, § 601(b)(4), Nov. 6, 1978, 92 Stat. 2896.)

EFFECTIVE DATE

Section effective with respect to corporations chartered after Dec. 31, 1978 and before Jan. 1, 1984, see section 601(d) of Pub. L. 95-600, set out as an Effective Date note under section 1391 of this title.

SUBPART B—INFORMATION CONCERNING TRANSACTIONS WITH OTHER PERSONS

Sec.
6050B. Returns relating to unemployment compensation.

AMENDMENTS

1978—Pub. L. 95-600, title I, § 112(c)(2), Nov. 6, 1978, 92 Stat. 2778, added item 6050B.

§ 6041. Information at source

[See main edition for text of (a) and (b)]

(c) Recipient to furnish name and address

When necessary to make effective the provisions of this section, the name and address of the recipient of income shall be furnished upon demand of the person paying the income.

(d) Section does not apply to certain tips

This section shall not apply to tips with respect to which section 6053(a) (relating to reporting of tips) applies.

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 501(b), 92 Stat. 2878.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600 redesignated former subsec. (d) as (c).

Subsec. (d). Pub. L. 95-600 added subsec. (d). Former subsec. (d) redesignated (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to payments made after Dec. 31, 1978, see section 501(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6001 of this title.

§ 6050B. Returns relating to unemployment compensation

(a) Requirement of reporting

Every person who makes payments of unemployment compensation aggregating $10 or more to any individual during any calendar year shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amounts of such payments and the name and address of the individual to whom paid.

(b) Statements to be furnished to individuals with respect to whom information is furnished

Every person making a return under subsection (a) shall furnish to each individual whose name is set forth in such return a written statement showing—

(1) the name and address of the person making such return, and

(2) the aggregate amount of payments to the individual as shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was made. No statement shall be required to be furnished to any individual under this subsection if the aggregate amount of payments to such individual shown on the return made under subsection (a) is less than $10.

(c) Definitions

For purposes of this section—

(1) Unemployment compensation

The term "unemployment compensation" has the meaning given to such term by section 85(c).

(2) Person

The term "person" means the officer or employee having control of the payment of the unemployment compensation, or the person appropriately designated for purposes of this section.

(Added Pub. L. 95-600, title I, § 112(b), Nov. 6, 1978, 92 Stat. 2777.)

EFFECTIVE DATE

Section effective with respect to payments of unemployment compensation made after Dec. 31, 1978, in taxable years ending after such date, see section 112(d) of Pub. L. 95-600, set out as an Effective Date note under section 85 of this title.

SUBPART C—INFORMATION REGARDING WAGES PAID EMPLOYEES

§ 6051. Receipts for employees

(a) Requirement

Every person required to deduct and withhold from an employee a tax under section 3101 or 3402, or who would have been required to deduct and withhold a tax under section 3402 (determined without regard to subsection (n)) if the employee had claimed no more than one withholding exemption, or every employer engaged in a trade or business who pays remuneration for services performed by an employee, including the cash value of such remuneration paid in any medium other than cash, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

[*See main edition for text of (1) to (4)*]

(5) the total amount of wages as defined in section 3121(a),

(6) the total amount deducted and withheld as tax under section 3101, and

(7) the total amount paid to the employee under section 3507 (relating to advance payment of earned income credit).

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3). In the case of tips received by an employee in the course of his employment, the amounts required to be shown by paragraphs (3) and (5) shall include only such tips as are included in statements furnished to the employer pursuant to section 6053(a). The amounts required to be shown by paragraph (5) shall not include wages which are exempted pursuant to sections 3101(c) and 3111(c) from the taxes imposed by sections 3101 and 3111.

[*See main edition for text of (b) to (e)*]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 317(b)(3), 91 Stat. 1540; Nov. 6, 1978, Pub. L. 95-600, title I, § 105(c), 92 Stat. 2776.)

AMENDMENTS

1978—Subsec. (a)(7). Pub. L. 95-600 added subsec. (a)(7).

1977—Subsec. (a). Pub. L. 95-216 directed that the amounts required to be shown by paragraph (5) shall not include wages which are exempted pursuant to sections 3101(c) and 3111(c) from the taxes imposed by sections 3101 and 3111.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective with respect to remuneration paid after June 30, 1978, see section 105(g)(2) of Pub. L. 95-600, set out as an Effective Date note under section 3507 of this title.

§ 6053. Reporting of tips

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 3102, 3121, 3202, 3231, 3401, 3402, 6001, 6041, 6051, 6652, 6674 of this title; title 42 section 409; title 45 section 231.

SUBPART E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

§ 6058. Information required in connection with certain plans of deferred compensation

[See main edition for text of (a) and (b)]

(c) Employer

For purposes of this section, the term "employer" includes a person described in section 401(c)(4) and an individual who establishes an individual retirement plan.

(d) Coordination with income tax returns, etc.

An individual who establishes an individual retirement plan shall not be required to file a return under this section with respect to such plan for any taxable year for which there is—

(1) no special IRP tax, and

(2) no plan activity other than—

(A) the making of contributions (other than rollover contributions), and

(B) the making of distributions.

(e) Special IRP tax defined

For purposes of this section, the term "special IRP tax" means a tax imposed by—

(1) section 408(f),

(2) section 409(c),

(3) section 4973, or

(4) section 4974.

(f) Cross references

For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

For coordination between the Department of the Treasury and the Department of Labor with respect to the information required under this section, see section 3004 of title III of the Employee Retirement Income Security Act of 1974.

(As amended Pub. L. 95-600, title I, § 157(k)(1), Nov. 6, 1978, 92 Stat. 2809.)

REFERENCES IN TEXT

Section 3004 of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (f), is classified to section 1204 of Title 29, Labor.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600 substituted "an individual retirement plan" for "an individual retirement account or annuity described in section 408".

Subsecs. (d) to (f). Pub. L. 95-600 added subsecs. (d) and (e) and redesignated former subsec. (d) as (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 157(k)(3) of Pub. L. 95-600 provided that: "The amendments made by paragraph (1) [amending subsec. (c), adding subsecs. (d) and (e), and redesignating former subsec. (d) as (f) of this section] shall apply to returns for taxable years beginning after December 31, 1977. The amendment made by paragraph (2) [adding section 7701(a)(37) of this title] shall apply to taxable years beginning after December 31, 1974."

PART V—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

§ 6072. Time for filing income tax returns

[See main edition for text of (a) to (d)]

(e) Organizations exempt from taxation under section 501(a)

In the case of an income tax return of an organization exempt from taxation under section 501(a) (other than an employees' trust described in section 401(a)), a return shall be filed on or before the 15th day of the 5th month following the close of the taxable year.

(As amended Oct. 4, 1976, Pub. L. 94-455, title X, § 1053(d)(3), 90 Stat. 1649; Nov. 10, 1978, Pub. L. 95-628, § 6(a), 92 Stat. 3630.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-628 added subsec. (e).

1976—Subsec. (e). Pub. L. 94-455, § 1053(d)(3), struck out subsec. (e) which related to income tax due dates postponed in the case of China Trade Act corporations.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 6(b) of Pub. L. 95-628 provided that: "The amendment made by subsection (a) [adding subsec. (e) of this section] shall apply to returns for taxable years beginning after the date of the enactment of this Act [Nov. 10, 1978]."

EFFECTIVE DATE OF 1976 AMENDMENT

Repeal of subsec. (e) by section 1053(d)(3) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 1053(e) of Pub. L. 94-455 set out as an Effective Date of 1976 Amendment note under section 116 of this title.

§ 6073. Time for filing declarations of estimated income tax by individuals

[See main edition for text of (a)]

(b) Farmers or fishermen

Declarations of estimated tax required by section 6015 from any individual—

(1) whose estimated gross income from farming or fishing (including oyster farming) for the taxable year is at least two-thirds of the total estimated gross income from all sources for the taxable year, or

(2) whose gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least two-thirds of the total gross income from all sources shown on such return,

may, in lieu of the time prescribed in subsection (a), be filed at any time on or before January 15 of the taxable year succeeding the taxable year.

[See main edition for text of (c) to (e)]

(As amended Nov. 10, 1978, Pub. L. 95-628, § 7(a), 92 Stat. 3630.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-628 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7(b) of Pub. L. 95-628 provided that: "The amendment made by subsection (a) [amending subsec. (b) of this section] shall apply to declarations of estimated tax for taxable years beginning after the date of the enactment of this Act [Nov. 10, 1978]."

§ 6075. Time for filing estate and gift tax returns

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2032A, 2040, 6166, 6166A, 7269 of this title.

PART VII—PLACE FOR FILING RETURNS OR OTHER DOCUMENTS

§ 6091. Place for filing returns or other document

[*See main edition for text of* (a)]

(b) Tax returns

In the case of returns of tax required under authority of part II of this subchapter—

(1) Persons other than corporations

[*See main edition for text of* (A)]

(B) Exception

Returns of—

[*See main edition for text of* (i) *and* (ii)]

(iii) persons who claim the benefits of section 911 (relating to income earned by employees in certain camps), section 913 (relating to deduction for certain expenses of living abroad), section 931 (relating to income from sources within possessions of the United States), or section 933 (relating to income from sources within Puerto Rico),

[*See main edition for text of* (iv) *and* (v)]

shall be made at such place as the Secretary may by regulations designate.

(2) Corporations

[*See main edition for text of* (A)]

(B) Exception

Returns of—

(i) corporations which have no principal place of business or principal office or agency in any internal revenue district,

(ii) corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations) or section 936 (relating to possession tax credit),

(iii) foreign corporations, and

(iv) corporations with respect to which an assessment was made under section 6851(a) (relating to termination assessments) with respect to the taxable year,

shall be made at such place as the Secretary may by regulations designate.

[*See main edition for text of* (3) *to* (5)]

(As amended Oct. 4, 1976, Pub. L. 94-455, title X, § 1053(d)(4), 90 Stat. 1649; Nov. 8, 1978, Pub. L. 95-615, §§ 202(f)(5), 207(b), 92 Stat. 3100, 3108.)

AMENDMENTS

1978—Subsec. (b)(1)(B)(iii). Pub. L. 95-615 substituted "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)" and inserted "section 913 (relating to deduction for certain expenses of living abroad)," preceding "section 931".

1976—Subsec. (b)(2)(B). Pub. L. 94-455, § 1503(d)(4), in cl. (ii), struck out provision which permitted returns of a corporation claiming the benefits of section 941 of this title, relating to the special deduction for China Trade corporations, to be made at such place as the Secretary may designate by regulation.

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as an Effective Date of 1978 Amendment note under section 911 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subsec. (b)(2)(B)(ii) by section 1053(d)(4) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1977, see section 1053(e) of Pub. L. 94-455 set out as an Effective Date of 1976 Amendment note under section 116 of this title.

PART VIII—DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND

§ 6096. Designation by individuals

[*See main edition for text of* (a)]

(b) Income tax liability

For purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his return), reduced by the sum of the credits (as shown in his return) allowable under sections 33, 37, 38, 40, 41, 42, 44, 44A, 44B, and 44C.

[*See main edition for text of* (c)]

(As amended Pub. L. 95-30, title II, § 202(d)(6), May 23, 1977, 91 Stat. 151; Pub. L. 95-618, title I, § 101(b)(4), Nov. 9, 1978, 92 Stat. 3180.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-618 substituted "44B, and 44C" for "and 44B".

1977—Subsec. (b). Pub. L. 95-30 added reference to section 44B.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable to taxable years ending on or after April 20, 1977, see section 101(c) of Pub. L. 95-618, set out as an Effective Date note under section 44C of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Amendment of subsec. (b) of this section by section 401(a)(2)(C) of Pub. L. 94-455 applicable to taxable

years ending after Dec. 31, 1975, but ceasing to be applicable to taxable years ending after Dec. 31, 1978, see section 401(e) of Pub. L. 94-455, as amended, set out as an Effective Date of 1976 Amendment note under section 42 of this title.

Subchapter B—Miscellaneous Provisions

§ 6103. Confidentiality and disclosure of returns and return information

(a) General rule

Returns and return information shall be confidential, and except as authorized by this title—

[*See main edition for text of (1) and (2)*]

(3) no other person (or officer or employee thereof) who has or had access to returns or return information under subsection (e)(1)(D)(iii), subsection (m)(4)(B), or subsection (n),

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term "officer or employee" includes a former officer or employee.

[*See main edition for text of (b) and (c)*]

(d) Disclosure to State tax officials

Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 44, 51, and 52 and subchapter D of chapter 36, shall be open to inspection by or disclosure to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the return or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

[*See main edition for text of (e) to (g)*]

(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc.

[*See main edition for text of (1)*]

(2) Department of Justice

In a matter involving tax administration, a return or return information shall be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and solely for their use in, any proceeding before a Federal grand jury or preparation for any proceeding (or investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, but only if—

(A) the taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title;

[*See main edition for text of (B), (C) and (3)*]

(4) Disclosure in judicial and administrative tax proceedings

A return or return information may be disclosed in a Federal or State judicial or administrative proceeding pertaining to tax administration, but only—

(A) the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title;

[*See main edition for text of (B) to (D)*]

However, such return or return information shall not be disclosed as provided in subparagraph (A), (B), or (C) if the Secretary determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation.

[*See main edition for text of (5)*]

(i) Disclosure to Federal officers or employees for administration of Federal laws not relating to tax administration

[*See main edition for text of (1)*]

(2) Return information other than taxpayer return information

Upon written request from the head of a Federal agency described in paragraph (1)(A), or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General, the Secretary shall disclose return information (other than taxpayer return information) to officers and employees of such agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) described in paragraph (1)(A). Such request shall set forth—

[*See main edition for text of (A) to (D)*]

However, the Secretary shall not disclose any return or return information under this paragraph if he determines that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation. For purposes of this paragraph, the name and address of the taxpayer shall not be treated as taxpayer return information.

(3) Disclosure of return information concerning possible criminal activities

The Secretary may disclose in writing return information, other than taxpayer return information, which may constitute evidence of a violation of Federal criminal laws to the extent necessary to apprise the head of the appropriate Federal agency charged with the responsibility for enforcing such laws. For purposes of the preceding sentence, the name and address of the taxpayer shall not be treated as taxpayer return information if there is return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal laws.

[See main edition for text of (4) to (6); (j)]

(k) Disclosure of certain returns and return information for tax administration purposes

[See main edition for text of (1) to (3)]

(4) Disclosure of competent authority under tax convention

A return or return information may be disclosed to a competent authority of a foreign government which has an income tax or gift and estate tax convention, or other convention relating to the exchange of tax information, with the United States but only to the extent provided in, and subject to the terms and conditions of, such convention.

[See main edition for text of (5) and (6); (l)]

(m) Disclosure of taxpayer identity information

(1) Tax refunds

The Secretary may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the Secretary, after reasonable effort and lapse of time, has been unable to locate such persons.

(2) Federal claims

Upon written request, the Secretary may disclose the mailing address of a taxpayer to officers and employees of an agency personally and directly engaged in, and solely for their use in, preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) pertaining to the collection or compromise of a Federal claim against such taxpayer in accordance with the provisions of section 3 of the Federal Claims Collection Act of 1966.

(3) National Institute for Occupational Safety and Health

Upon written request, the Secretary may disclose the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health solely for the purpose of locating individuals who are, or may have been, exposed to occupational hazards in order to determine the status of their health or to inform them of the possible need for medical care and treatment.

(4) Individuals who have defaulted on student loans

(A) In general

Upon written request by the Commissioner of Education, the Secretary may disclose the mailing address of any taxpayer who has defaulted on a loan made from the student loan fund established under part E of title IV of the Higher Education Act of 1965 for use only for purposes of locating such taxpayer for purposes of collecting such loan.

(B) Disclosure to institutions

Any mailing address disclosed under subparagraph (A) may be disclosed by the Commissioner of Education to any educational institution with which he has an agreement under part E of title IV of the Higher Education Act of 1965 only for use by officers, employees or agents of such institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made by such institution pursuant to such agreement for purposes of collecting such loans.

[See main edition for text of (n) to (q)]

(As amended Dec. 13, 1977, Pub. L. 95-210, § 5, 91 Stat. 1491; Nov. 6, 1978, Pub. L. 95-600, title V, § 503, title VII, § 701(bb)(1)(A), (B), (2)-(5), 92 Stat. 2879, 2921-2923.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (m)(4), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219. Part E of title IV of the Higher Education Act of 1965 is classified generally to part (D) (§ 1087aa et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-600, § 701(bb)(1)(B), inserted ", subsection (m)(4)(B)," following "subsection (e)(1)(D)(iii)".

Subsec. (d). Pub. L. 95-600, § 701(bb)(2), inserted "31," following "21, 23, 24,".

Subsec. (h)(2). Pub. L. 95-600, § 503(a), substituted "In a matter involving tax administration, a" for "A", "officers and employees" for "attorneys" following "open to inspection by or disclosure to", added "any proceeding before a Federal grand jury or" following "for their use in", and struck out "in a matter involving tax administration" following "or any Federal or State court".

Subsec. (h)(2)(A). Pub. L. 95-600, § 503(b)(1), substituted "the proceeding" for "such proceeding" and added "or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability in respect of any tax imposed under this title".

Subsec. (h)(4)(A). Pub. L. 95-600, § 503(b)(2), substituted "the taxpayer is a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of such civil liability, in respect of any tax imposed under this title" for "if the taxpayer is a party to such proceeding".

Subsec. (i). Pub. L. 95-600, § 701(bb)(3), (4), in pars. (2) and (3) added provisions relating to the name and address of the taxpayer not being treated as return information.

Subsec. (k)(4). Pub. L. 95–600, § 701(bb)(5), struck out reference to income tax in catchline and added provisions relating to gift and estate tax and exchange of tax information.

Subsec. (m). Pub. L. 95–600, § 701(bb)(1)(A), reenacted pars. (1) to (3) without change and added par. (4).

1977—Subsec. (m). Pub. L. 95–210 changed the statement in the existing provisions describing the Secretary's authority by substituting provisions that the Secretary "may disclose" for provisions under which the Secretary was "authorized to disclose", placed paragraph headings at the beginning of existing pars. (1) and (2), and added par. (3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(bb)(8) of Pub. L. 95–600 provided that:

"(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending subsecs. (a)(3), (d), (i)(2), (3), (k)(4) and (m) of this section and sections 7213(a) and 7217(b), (c) and (d) of this title] shall take effect January 1, 1977.

"(B) The amendments made by paragraph (7) [amending section 7217(b), (c) and (d) of this title] shall apply with respect to disclosures made after the date of the enactment of this Act [Nov. 6, 1978]."

INSPECTION OF TAX RETURNS

The Executive Orders listed below authorized inspection of returns for certain specified purposes:

Ex. Ord. No.	Date	Federal Register
• • •	• • •	
11697	Jan. 17, 1973	38 F.R. 1723
• • •	• • •	
11709	Mar. 27, 1973	38 F.R. 8131
• • •	• • •	

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2204, 4424, 6104, 6108, 7213, 7217, 8021 of this title; title 28 section 594; title 29 section 1134; title 31 section 67; title 42 section 432.

§ 6104. Publicity of information required from certain exempt organizations and certain trusts

(a) Inspection of applications for tax exemption

(1) Public inspection

(A) Organizations described in section 501

If an organization described in section 501(c) or (d) is exempt from taxation under section 501(a) for any taxable year, the application filed by the organization with respect to which the Secretary made his determination that such organization was entitled to exemption under section 501(a), together with any paper submitted in support of such application, and any letter or other document issued by the Internal Revenue Service with respect to such application shall be open to public inspection at the national office of the Internal Revenue Service. In the case of any application filed after the date of the enactment of this subparagraph, a copy of such application and such letter or document shall be open to public inspection at the appropriate field office of the Internal Revenue Service (determined under regulations prescribed by the Secretary). Any inspection under this subparagraph may be made at such times, and in such manner, as the Secretary shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subparagraph, the Secretary shall, on the request of any person with respect to such organization, furnish a statement indicating the subsection and paragraph of section 501 which it has been determined describes such organization.

[See main edition for text of (B) to (D)]

(2) Inspection by committees of Congress

Section 6103(f) shall apply with respect to—

[See main edition for text of (A) and (B)]

as if such papers constituted returns.

(b) Inspection of annual information returns

The information required to be furnished by sections 6033, 6034, 6056, and 6058, together with the names and addresses of such organizations and trusts, shall be made available to the public at such times and in such places as the Secretary may prescribe. Nothing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a)) which is required to furnish such information.

[See main edition for text of (c) and (d)]

(As amended Feb. 10, 1978, Pub. L. 95–227, § 4(e), 92 Stat. 23; Oct. 20, 1978, Pub. L. 95–488, § 1(d), 92 Stat. 1638; Nov. 6, 1978, Pub. L. 95–600, title VII, § 703(m), 92 Stat. 2943.)

AMENDMENTS

1978—Subsec. (a)(1)(A). Pub. L. 95–488, § 1(d)(1), struck out "(other than in paragraph (21) thereof)" following "section 501(c)".

Pub. L. 95–227, § 4(e)(1), added "(other than in paragraph (21) thereof)" following "501(c)".

Subsec. (a)(2). Pub. L. 95–600 substituted "Section 6103(f)" for "Section 6103(d)".

Subsec. (b). Pub. L. 95–488, § 1(d)(2), struck out provisions exempting from applicability of this subsec. the information required by a trust described in section 501(c)(21).

Pub. L. 95–227, § 4(e)(2), added provisions exempting from applicability of this subsec. the information required by a trust described in section 501(c)(21).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Amendment by Pub. L. 95–488 effective with respect to taxable years beginning after Dec. 31, 1977 and nothing in amendment by Pub. L. 95–488 construed to permit disclosure of confidential business information of contributors to any trust described in section 501(c)(21), see section 1(e) of Pub. L. 95–488 set out as an Effective Date of 1978 Amendment note under section 192 of this title.

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

CHAPTER 62—TIME AND PLACE FOR PAYING TAX

Subchapter A—Place and Due Date for Payment of Tax

§ 6153. Installment payments of estimated income tax by individuals

REFERENCES IN TEXT

Section 141, referred to in subsec. (g), was repealed by Pub. L. 95-30, title I, § 101(d)(1), May 23, 1977, 91 Stat. 133.

§ 6154. Installment payments of estimated income tax by corporations

[See main edition for text of (a) and (b)]

(c) Estimated tax defined

For purposes of this title, in the case of a corporation the term "estimated tax" means the excess of—

(1) the amount which the corporation estimates as the amount of the income tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(2) the amount which the corporation estimates as the sum of the credits against tax provided by part IV of subchapter A of chapter 1.

[See main edition for text of (d) to (g)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(20)(A), 92 Stat. 2823.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600 struck out provisions relating to the corporation's temporary estimated tax exemption.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 6201, 6601, 6651, 7701 of this title.

§ 6156. Installment payments of tax on use of highway motor vehicles and civil aircraft

[See main edition for text of (a) to (d)]

(e) Section inapplicable to certain liabilities

This section shall not apply to any liability for tax incurred in—

(1) April, May, or June of any year, or

(2) July, August, or September of 1984, in the case of the tax imposed by section 4481.

(As amended Pub. L. 95-599, title V, § 502(a)(9), Nov. 6, 1978, 92 Stat. 2756.)

AMENDMENTS

1978—Subsec. (e)(2). Pub. L. 95-599 substituted "1984" for "1979".

§ 6157. Payment of Federal unemployment tax on quarterly or other time period basis

(a) General rule

Every person who for the calendar year is an employer (as defined in section 3306(a)) shall—

(1) if the person is such an employer for the preceding calendar year (determined by only taking into account wages paid and employment during such preceding calendar year), compute the tax imposed by section 3301 for each of the first 3 calendar quarters in the calendar year on wages paid for services which respect to which the person is such an employer for such preceding calendar year (as so determined), and

(2) if the person is not such an employer for the preceding calendar year with respect to any services (as so determined), compute the tax imposed by section 3301 on wages paid for services with respect to which the person is not such an employer for the preceding calendar year (as so determined)—

(A) for the period beginning with the first day of the calendar year and ending with the last day of the calendar quarter (excluding the last calendar quarter) in which such person becomes such an employer with respect to such services, and

(B) for the third calendar quarter of such year, if the period specified in subparagraph (A) includes only the first two calendar quarters of the calendar year.

The tax for any calendar quarter or other period shall be computed as provided in subsection (b) and the tax as so computed shall, except as otherwise provided in subsections (c) and (d), be paid in such manner and at such time as may be provided in regulations prescribed by the Secretary.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 94-566, title I, § 114(b), Oct. 20, 1976, 90 Stat. 2669.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-566, § 114(b) changed the general rule covering payment of Federal unemployment tax on a quarterly or other time period basis to conform to the altered definitions of employment and wages pertaining to domestic and agricultural service in section 3306 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subsec. (a) by section 114(b) of Pub. L. 94-566 effective with respect to remuneration paid after Dec. 31, 1977, for services performed after that date, see section 114(c) of Pub. L. 94-566 set out as an Effective Date of 1976 Amendment note under section 3306 of this title.

§ 6158. Installment payment of tax attributable to divestitures pursuant to Bank Holding Company Act amendments of 1970

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1101, 1103, 6601 of this title.

Subchapter B—Extensions of Time for Payment

§ 6166. Alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business

[See main edition for text of (a)]

(b) Definitions and special rules

[See main edition for text of (1)]

(2) Rules for applying paragraph (1)

For purposes of paragraph (1)—

[See main edition for text of (A) to (C)]

(D) Certain interests held by members of decedent's family

All stock and all partnership interests held by the decedent or by any member of his family (within the meaning of section 267(c)(4)) shall be treated as owned by the decedent.

[See main edition for text of (3) to (6)]

(7) Partnership interests and stock which is not readily tradable

(A) In general

If the executor elects the benefits of this paragraph (at such time and in such manner as the Secretary shall by regulations prescribe), then—

(i) for purposes of paragraph (1)(B)(i) or (1)(C)(i) (whichever is appropriate) and for purposes of subsection (c), any capital interest in a partnership and any non-readily-tradable stock which (after the application of paragraph (2)) is treated as owned by the decedent shall be treated as included in determining the value of the decedent's gross estate,

(ii) the executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a), and

(iii) section 6601(j) (relating to 4-percent rate of interest) shall not apply.

(B) Non-readily-tradable stock defined

For purposes of this paragraph, the term "non-readily-tradable stock" means stock for which, at the time of the decedent's death, there was no market on a stock exchange or in an over-the-counter market.

[See main edition for text of (c) to (j)]

(As amended Pub. L. 95-600, title V, § 512(a), (b), Nov. 6, 1978, 92 Stat. 2882, 2883.)

AMENDMENTS

1978—Subsec. (b)(2)(D). Pub. L. 95-600, § 512(a), added subsec. (b)(2)(D).

Subsec. (b)(7). Pub. L. 95-600, § 512(b), added subsec. (b)(7).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 512(c) of Pub. L. 95-600 provided that: "The amendments made by this section [adding subsecs. (b)(2)(D), (b)(7) of this section] shall apply with respect to the estates of decedents dying after the date of the enactment of this Act [Nov. 6, 1978]."

CHAPTER 63—ASSESSMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 46 of this title.

Subchapter A—In General

§ 6201. Assessment authority

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years beginning after Dec. 31, 1974, see section 209(b) of Pub. L. 94-12, as amended, set out as an Effective Date of 1975 Amendment note under section 43 of this title.

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6601, 6659, 6676, 6677, 6679, 6682, 6687, 6693, 6696, 6697, 6698, 7463 of this title.

§ 6212. Notice of deficiency

[See main edition for text of (a) and (b)]

(c) Further deficiency letters restricted

(1) General rule

If the Secretary has mailed to the taxpayer a notice of deficiency as provided in subsection (a), and the taxpayer files a petition with the Tax Court within the time prescribed in section 6213(a), the Secretary shall have no right to determine any additional deficiency of income tax for the same taxable year, of gift tax for the same calendar quarter, of estate tax in respect of the taxable estate of the same decedent, of chapter 41 tax for the same taxable year, of chapter 43 tax for the same taxable year, of chapter 44 tax for the same taxable year, of section 4940 tax for the same taxable year, or of chapter 42 tax (other than under section 4940) with respect to any act (or failure to act) to which such petition relates, except in the case of fraud, and except as provided in section 6214(a) (relating to assertion of greater deficiencies before the Tax Court), in section 6213(b)(1) (relating to mathematical or clerical errors), in section 6851 (relating to termination assessments), or in section 6861(c) (relating to the making of jeopardy assessments).

(2) Cross references

For assessment as a deficiency notwithstanding the prohibition of further deficiency letters, in the case of—

(A) Deficiency attributable to change of treatment with respect to itemized deductions and zero bracket amount, see section 63(g)(5).

(B) Deficiency attributable to gain on involuntary conversion, see section 1033(a)(2)(C) and (D).

(C) Deficiency attributable to gain on sale or exchange of principal residence, see section 1034(j).

[(D) Repealed. Pub. L. 94-455, title XIX, § 1901(b)(37)(C), Oct. 4, 1976, 90 Stat. 1803]

(E) Deficiency attributable to activities not engaged in for profit, see section 183(e)(4).

(As amended May 23, 1977, Pub. L. 95-30, title I, § 101(d)(15), 91 Stat. 134; Nov. 6, 1978, Pub. L. 95-600, title IV, § 405(c)(5), title VII, § 701(t)(3)(C), 92 Stat. 2871, 2912.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95-600, § 701(t)(3)(C), substituted "same taxable year" for "same taxable years" in two places.

Subsec. (c)(2)(C). Pub. L. 95-600, § 405(c)(5), substituted "principal residence" for "personal residence".

1977—Subsec. (c)(2)(A). Pub. L. 95-30 substituted "change of treatment with respect to itemized deductions and zero bracket amount, see section 63(g)(5)" for "change of election with respect to the standard deduction where taxpayer and his spouse made separate returns, see section 144(b)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (c)(1) by section 701(t)(3)(C) of Pub. L. 95-600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 859 of this title.

Amendment of subsec. (c)(2)(C) by section 405(c)(5) of Pub. L. 95-600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1034 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1033, 1039, 1311, 2513, 4941, 4942, 4943 to 4945, 4951, 4952, 4971, 4975, 6013, 6040, 6155, 6213, 6503, 6512, 6861, 6901, 7421 of this title; title 29 section 1342.

§ 6213. Restrictions applicable to deficiencies; petition to Tax Court

[See main edition for text of (a)]

(b) Exceptions to restrictions on assessment

[See main edition for text of (1) and (2)]

(3) Assessments arising out of tentative carryback or refund adjustments

If the Secretary determines that the amount applied, credited, or refunded under section 6411 is in excess of the overassessment attributable to the carryback or the amount described in section 1341(b)(1) with respect to which such amount was applied, credited, or refunded, he may assess without regard to the provisions of paragraph (2) the amount of the excess as a deficiency as if it were due to a mathematical or clerical error appearing on the return.

[See main edition for text of (4); (c) and (d)]

(e) Suspension of filing period for certain excise taxes

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4941(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4951(e)(4), 4952(e)(2), 4971(c)(3), or 4975(f)(6).

(f) Definitions

For purposes of this section—

(1) Return

The term "return" includes any return, statement, schedule, or list, and any amendment or supplement thereto, filed with respect to any tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44.

(2) Mathematical or clerical error

The term "mathematical or clerical error" means—

[See main edition for text of (A) to (D)]

(E) an entry on a return of a deduction or credit in an amount which exceeds a statutory limit imposed by subtitle A or B, or chapter 41, 42, 43, or 44, if such limit is expressed—

(i) as a specified monetary amount, or

(ii) as a percentage, ratio, or fraction,

and if the items entering into the application of such limit appear on such return.

[See main edition for text of (g)]

(As amended Feb. 10, 1978, Pub. L. 95-227, § 4(d)(1), (2), 92 Stat. 23; Nov. 6, 1978, Pub. L. 95-600, title V, § 504(b)(2), 92 Stat. 2881.)

AMENDMENTS

1978—Subsec. (b)(3). Pub. L. 95-600 added "or refund" following "carryback" in subsection catchline, and "or the amount described in section 1341(b)(1)" following "carryback".

Subsec. (e). Pub. L. 95-227, § 4(d)(1), added provisions relating to sections 4951 and 4952 of this title, and substituted "4975(f)(6)" for "4975(f)(4)".

Subsec. (f). Pub. L. 95-227, § 4(d)(2), added references to chapters 41 and 44 wherever appearing therein.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6411 of this title.

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 2011, 2014, 4941 to 4945, 4951, 4952, 4971, 4975, 6013, 6155, 6201, 6204, 6212, 6501, 6512, 6601, 6651, 6861, 6863, 6871, 7404, 7421 of this title.

CHAPTER 64—COLLECTION

Subchapter A—General Provisions

§ 6302. Mode or time of collection

[*See main edition for text of (a) and (b)*]

(c) Use of Government depositaries

The Secretary may authorize Federal Reserve banks, and incorporated banks, trust companies, domestic building and loan associations, or credit unions which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks, trust companies, domestic building and loan associations, and credit unions is to be treated as payment of such tax to the Secretary.

(d) Cross reference

For treatment of payment of earned income advance amounts as payment of withholding and FICA taxes, see section 3507(d).

(As amended Oct. 28, 1977, Pub. L. 95-147, § 3(a), 91 Stat. 1228; Nov. 6, 1978, Pub. L. 95-600, title I, § 105(e), 92 Stat. 2776.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-600 added subsec. (d).

1977—Subsec. (c). Pub. L. 95-147 substituted ", trust companies, domestic building and loan associations, or credit unions" for "or trust companies" and ", trust companies, domestic building and loan associations, and credit unions" for "and trust companies".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective with respect to remuneration paid after June 30, 1978, see section 105(g)(2) of Pub. L. 95-600, set out as an Effective Date note under section 3507 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 3(c) of Pub. L. 95-147 provided that: "The amendments made by this section [amending this section and section 7502 of this title] shall apply to amounts deposited after the date of the enactment of this Act [Oct. 28, 1977]."

Subchapter C—Lien for Taxes

§ 6321. Lien for taxes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6322, 6323, 6325 of this title; title 29 section 1368; title 30 section 934.

§ 6323. Validity and priority against certain persons

[*See main edition for text of (a) to (e)*]

(f) Place for filing notice; form

[*See main edition for text of (1) to (3)*]

(4) Indexing required with respect to certain real property

In the case of real property, if—

(A) under the laws of the State in which the real property is located, a deed is not valid as against a purchaser of the property who (at the time of purchase) does not have actual notice or knowledge of the existence of such deed unless the fact of filing of such deed has been entered and recorded in a public index at the place of filing in such a manner that a reasonable inspection of the index will reveal the existence of the deed, and

(B) there is maintained (at the applicable office under paragraph (1)) an adequate system for the public indexing of Federal tax liens,

then the notice of lien referred to in subsection (a) shall not be treated as meeting the filing requirements under paragraph (1) unless the fact of filing is entered and recorded in the index referred to in subparagraph (B) in such a manner that a reasonable inspection of the index will reveal the existence of the lien.

(g) Refiling of notice

For purposes of this section—

[*See main edition for text of (1)*]

(2) Place for filing

A notice of lien refiled during the required refiling period shall be effective only—

(A) if—

(i) such notice of lien is refiled in the office in which the prior notice of lien was filed, and

(ii) in the case of real property, the fact of refiling is entered and recorded in an index to the extent required by subsection (f)(4); and

[*See main edition for text of (B), (3) and (4); (h) and (i)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(q)(1), (2), 92 Stat. 2937, 2938.)

AMENDMENTS

1978—Subsec. (f)(4). Pub. L. 95-600, § 702(q)(1), in par. heading substituted "Indexing required with respect to certain real property" for "Index" and in text added provisions relating to the validity of a deed, under the laws of the State in which the real property is located, as against a purchaser who does not have actual notice or knowledge of the existence of such deed and provisions relating to the maintenance of an adequate system for the public indexing of Federal tax liens.

Subsec. (g)(2)(A). Pub. L. 95-600, § 702(q)(2), inserted reference to real property.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(q)(3) of Pub. L. 95-600 provided that:

"(A) The amendments made by this subsection [amending subsecs. (f)(4) and (g)(2)(A) of this section] shall apply with respect to liens, other security interests, and other interests in real property acquired after the date of the enactment of this Act [Nov. 6, 1978].

"(B) If, after the date of the enactment of this Act, there is a change in the application (or nonapplication) of section 6323(f)(4) of the Internal Revenue Code of 1954 (as amended by paragraph (1)) with respect to any filing jurisdiction, such change shall apply only with respect to liens, other security interests, and other interests in real property acquired after the date of such change."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6324, 6324A, 6325, 6332 of this title; title 11 App. section 724; title 30 section 934.

§ 6324A. Special lien for estate tax deferred under section 6166 or 6166A

[See main edition for text of (a)]

(b) Section 6166 lien property

[See main edition for text of (1)]

(2) Maximum value of required property

The maximum value of the property which the Secretary may require as section 6166 lien property with respect to any estate shall be a value which is not greater than the sum of—

(A) the deferred amount, and

(B) the required interest amount.

For purposes of the preceding sentence, the value of any property shall be determined as of the date prescribed by section 6151(a) for payment of the tax imposed by chapter 11 and shall be determined by taking into account any encumbrance such as a lien under section 6324B.

[See main edition for text of (3); (c)]

(d) Special rules

[See main edition for text of (1) to (4)]

(5) Additional lien property required in certain cases

If at any time the value of the property covered by the agreement is less than the unpaid portion of the deferred amount and the required interest amount, the Secretary may require the addition of property to the agreement (but he may not require under this paragraph that the value of the property covered by the agreement exceed such unpaid portion). If property having the required value is not added to the property covered by the agreement (or if other security equal to the required value is not furnished) within 90 days after notice and demand therefor by the Secretary, the failure to comply with the preceding sentence shall be treated as an act accelerating payment of the installments under section 6166(g) or 6166A(h).

[See main edition for text of (6)]

(e) Definitions

For purposes of this section—

[See main edition for text of (1)]

(2) Required interest amount

The term "required interest amount" means the aggregate amount of interest which will be payable over the first 4 years of the deferral period with respect to the deferred amount (determined as of the date prescribed by section 6151(a) for the payment of the tax imposed by chapter 11).

[See main edition for text of (3)]

(4) Application of definitions in case of deficiencies

In the case of a deficiency, a separate deferred amount, required interest amount, and deferral period shall be determined as of the due date of the first installment after the deficiency is prorated to installments under section 6166 or 6166A.

(As amended Pub. L. 95-600, title VII, § 702(e)(1), Nov. 6, 1978, 92 Stat. 2929.)

AMENDMENTS

1978—Subsec. (b)(2)(B). Pub. L. 95-600, § 702(e)(1)(B), substituted "required interest amount" for "aggregate interest amount".

Subsec. (d)(5). Pub. L. 95-600, § 702(e)(1)(C), substituted "required interest amount" for "aggregate interest amount".

Subsec. (e)(2). Pub. L. 95-600, § 702(e)(1)(A), substituted "Required interest amount" for "Aggregate interest amount" in heading and in the text "required interest amount", "over the first 4 years of the deferral period" and "for the payment" for "aggregate interest amount", "over the deferral period" and "for payment", respectively.

Subsec. (e)(4). Pub. L. 95-600, § 702(e)(1)(D), substituted "required interest amount" for "aggregate interest amount".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(e)(2) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsecs. (b)(2)(B), (d)(5), and (e) (2), (4) of this section] shall apply to the estates of decedents dying after December 31, 1976."

§ 6324B. Special lien for additional estate tax attributable to farm, etc., valuation

[See main edition for text of (a)]

(b) Period of lien

The lien imposed by this section shall arise at the time an election is filed under section 2032A and shall continue with respect to any interest in the qualified real property—

[See main edition for text of (1) and (2); (c) and (d)]

(As amended Pub. L. 95-600, title VII, § 702(r)(4), Nov. 6, 1978, 92 Stat. 2939.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600 substituted "qualified real property" for "qualified farm real property".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, see section 702(r)(5) of Pub. L. 95-600, set out as Effective Date of 1978 Amendment note under section 6698 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2032A, 6324A, 6325 of this title.

§ 6325. Release of lien or discharge of property

[See main edition for text of (a) to (c)]

(d) Subordination of lien

Subject to such regulations as the Secretary may prescribe, the Secretary may issue a certificate of subordination of any lien imposed by this chapter upon any part of the property subject to such lien if—

(1) there is paid over to the Secretary an amount equal to the amount of the lien or interest to which the certificate subordinates the lien of the United States,

(2) the Secretary believes that the amount realizable by the United States from the property to which the certificate relates, or from any other property subject to the lien, will ultimately be increased by reason of the issuance of such certificate and that the ultimate collection of the tax liability will be facilitated by such subordination, or

(3) in the case of any lien imposed by section 6324B, if the Secretary determines that the United States will be adequately secured after such subordination.

[*See main edition for text of (e) to (h)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title V, § 513(a), 92 Stat. 2883.)

AMENDMENTS

1978—Subsec. (d)(3). Pub. L. 95-600 added subsec. (d)(3).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 513(b) of Pub. L. 95-600 provided that: "The amendments made by subsection (a) [adding subsec. (d)(3) of this section] shall apply with respect to the estates of decedents dying after December 31, 1976."

Subchapter D—Seizure of Property for Collection of Taxes

§ 6332. Surrender of property subject to taxes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 6342, 6621 of this title; title 29 section 1368; title 30 section 934.

Subchapter E—Collection of State Individual Income Taxes

§ 6362. Qualified State individual income taxes

[*See main edition for text of (a)*]

(b) Qualified resident tax based on taxable income

[*See main edition for text of (1)*]

(2) Permitted adjustments

A tax which otherwise meets the requirements of paragraph (1) shall not be deemed to fail to meet such requirements solely because it provides for one or more of the following adjustments:

(A) There is imposed a tax on the amount taxed under section 55 or 56 (relating to the minimum tax for tax preferences).

[*See main edition for text of (B), (C), (3) and (4); (c) to (e)*]

(f) Additional requirements

A tax imposed by a State shall meet the requirements of this subsection only if—

[*See main edition for text of (1) to (8)*]

(9) Withholding on compensation of employees of railroads, motor carriers, airlines, and water carriers

There is no contravention of the provisions of section section[1] 11504 of title 49 or of section 1112 of the Federal Aviation Act of 1958 with respect to the withholding of compensation to which such sections apply for purposes of the nonresident tax.

(As amended Pub. L. 95-473, § 2(a)(2)(H), Oct. 17, 1978, 92 Stat. 1465; Pub. L. 95-600, title IV, § 421(e)(8), Nov. 6, 1978, 92 Stat. 2877.)

AMENDMENTS

1978—Subsec. (b)(2)(A). Pub. L. 95-600, substituted "section 55 or 56" for "section 56".

Subsec. (f)(9). Pub. L. 95-473 substituted "section 11504 of title 49" for "26, 226A, or 324 of the Interstate Commerce Act".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

Subchapter A—Procedure in General

§ 6401. Amounts treated as overpayments

[*See main edition for text of (a)*]

(b) Excessive credits

If the amount allowable as credits under sections 31 (relating to tax withheld on wages) and 39 (relating to certain uses of gasoline, special fuels, and lubricating oil), and 43 (relating to earned income credit), exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31, 39, and 43), the amount of such excess shall be considered an overpayment. For purposes of the preceding sentence, any credit allowed under paragraph (1) of section 32 (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013 (g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31.

[*See main edition for text of (c)*]

(d) Cross reference

For rule allowing refund for excess investment credit attributable to solar or wind energy property, see section 46(a)(10)(C).

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(u)(15)(D), 92 Stat. 2919; Nov. 9, 1978, Pub. L. 95-618, title III, § 301(c)(2), 92 Stat. 3199.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-600, added provisions relating to credit to a nonresident alien individual.

Subsec. (d). Pub. L. 95-618 added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600, to the extent amendment relates to chapter 1 or 5 of this title, applicable to taxable years ending on or after Dec. 31, 1975, and, to the extent amendment relates to wage withholding under chapter 24 of this title, applicable to remuneration paid on or after the first day of the first month which begins more than 90 days after Nov. 6, 1978, see

[1] So in original.

section 701(u)(15)(E) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6013 of this title.

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by Pub. L. 94-12 applicable to taxable years beginning after Dec. 31, 1974, see section 209(b) of Pub. L. 94-12, as amended, set out as an Effective Date of 1975 Amendment note under section 43 of this title.

§ 6405. Reports of refunds and credits

(a) By Treasury to Joint Committee

No refund or credit of any income, war profits, excess profits, estate, or gift tax, or any tax imposed with respect to public charities, private foundations, operators' trust funds, pension plans, or real estate investment trusts under chapter 41, 42, 43, or 44, in excess of $200,000 shall be made until after the expiration of 30 days from the date upon which a report giving the name of the person to whom the refund or credit is to be made, the amount of such refund or credit, and a summary of the facts and the decision of the Secretary, is submitted to the Joint Committee on Taxation.

[See main edition for text of (b) to (e)]

(As amended Feb. 10, 1978, Pub. L. 95-227, § 4(d)(3), 92 Stat. 23.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-227 added provisions relating to applicability to public charities, operators' trust funds, or real estate investment trusts, and references to chapters 41 and 44.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

§ 6406. Prohibition of administrative review of decisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6611 of this title; title 31 section 67.

Subchapter B—Rules of Special Application

Sec.
6411. Tentative carryback and refund adjustments.
6424. Lubricating oil used for certain nontaxable purposes.

AMENDMENTS

1978—Pub. L. 95-618, title II, § 233(b)(2)(B), Nov. 9, 1978, 92 Stat. 3191, substituted in item 6424 "used for certain nontaxable purposes" for "not used in highway motor vehicles".

Pub. L. 95-600, title V, § 504(b)(1)(B), Nov. 6, 1978, 92 Stat. 2881, added "and refund" following "carryback" in item 6411.

§ 6411. Tentative carryback and refund adjustments

(a) Application for adjustment

A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by an investment credit carryback provided in section 46(b), by a work incentive program carryback provided in section 50A(b), by a new employee credit carryback provided in section 53(c), or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, or unused new employee credit, from which the carryback results and within a period of 12 months from the end of such taxable year (or, with respect to any portion of an investment credit carryback, a work incentive program carryback, or a new employee credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback (or, in the case of a work incentive program carryback, to an investment credit carryback, or, in the case of a new employee credit carryback, to an investment credit carryback or a work incentive program carryback) from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of net operating loss, net capital loss, unused investment credit, unused work incentive program credit, or unused new employee credit;

[See main edition for text of (2) to (6)]

An application under this subsection shall not constitute a claim for credit or refund.

(b) Allowance of adjustments

Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, or unused new employee credit from which such carryback results, whichever is the later, the Secretary shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year im-

mediately preceding the taxable year of the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, or unused new employee credit the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) Consolidated returns

If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, or unused new employee credit arises, loss or credit, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

(d) Tentative refund of tax under claim of right adjustment

(1) Application

A taxpayer may file an application for a tentative refund of any amount treated as an overpayment of tax for the taxable year under section 1341(b)(1). Such application shall be in such manner and form as the Secretary may prescribe by regulation and shall—

(A) be verified in the same manner as an application under subsection (a),

(B) be filed during the period beginning on the date of filing the return for such taxable year and ending on the date 12 months from the last day of such taxable year, and

(C) set forth in such detail and with such supporting data such regulations prescribe—

(i) the amount of the tax for such taxable year computed without regard to the deduction described in section 1341(a)(2),

(ii) the amount of the tax for all prior taxable years for which the decrease in tax provided in section 1341(a)(5)(B) was computed,

(iii) the amount determined under section 1341(a)(5)(B),

(iv) the amount of the overpayment determined under section 1341(b)(1); and

(v) such other information as the Secretary may require.

(2) Allowance of adjustments

Within a period of 90 days from the date on which an application is filed under paragraph (1), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for taxable year in which the overpayment occurs, whichever is later, the Secretary shall—

(A) review the application,

(B) determine the amount of the overpayment, and

(C) apply, credit, or refund such overpayment in a manner similar to the manner provided in subsection (b).

(3) Consolidated returns

The provisions of subsection (c) shall apply to an adjustment under this subsection to the same extent and manner as the Secretary may by regulations provide.

(As amended May 23, 1977, Pub. L. 95–30, title II, § 202(d)(5)(A), 91 Stat. 150; Nov. 6, 1978, Pub. L. 95–600, title V, § 504(a), (b)(1)(A), 92 Stat. 2880, 2881.)

AMENDMENTS

1978—Pub. L. 95–600, § 504(b)(1)(A), added "and refund" following "carryback" in section catchline.

Subsec. (d). Pub. L. 95–600, § 504(a), added subsec. (d).

1977—Subsec. (a). Pub. L. 95–30, § 202(d)(5)(A)(i) to (iv), added references to unused new employee credits and to new employee credit carrybacks in the provisions preceding par. (1) and in par. (1).

Subsecs. (b), (c). Pub. L. 95–30, § 202(d)(5)(A)(i), added references to unused new employee credits.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 504(c) of Pub. L. 95–600 provided that: "The amendments made by this section [amending subsec. (d) of this section, and sections 6213(b)(3) and 6501(m) of this title] shall apply to tentative refund claims filed on and after the date of the enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 44B of this title.

§ 6412. Floor stocks refunds

(a) In general

(1) Trucks, tires, tubes, tread rubber, and gasoline

Where before October 1, 1984, any article subject to the tax imposed by section 4061(a)(1), 4071(a)(1), (3), or (4), or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale (or, in the case of tread rubber, is intended for sale or is held for use), there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after October 1, 1984, if claim for such credit or refund is filed with the Secretary on or before March 31, 1985, based upon a request submitted to the manufacturer, producer, or importer before January 1, 1985, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before March 31, 1985, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline. No credit or

refund shall be allowable under this paragraph with respect to inner tubes for bicycle tires (as defined in section 4221(e)(4)(B)).

[See main edition for text of (2); (b) and (c)]

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(c), 92 Stat. 2757; Nov. 9, 1978, Pub. L. 95-618, title II, § 231(f)(1), 92 Stat. 3189.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-618 in par. heading struck out "and buses" following "Trucks".

Pub. L. 95-599 substituted "1984" for "1979" and "1985" for "1980" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 applicable with respect to articles sold after Nov. 9, 1978, see section 231(g) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 4063 of this title.

§ 6416. Certain taxes on sales and services

[See main edition for text of (a)]

(b) Special cases in which tax payments considered overpayments

Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

[See main edition for text of (1)]

(2) Specified uses and resales

The tax paid under chapter 32 (or under section 4041(a)(1) or (b)(1)) in respect of any article (other than coal taxable under section 4121) shall be deemed to be an overpayment if such article was, by any person—

[See main edition for text of (A) to (H)]

(I) in the case of any article taxable under section 4061(b), sold for use by the purchaser on or in connection with an automobile bus;

(J) in the case of a box, container, receptacle, bin, or other similar article taxable under section 4061(a), sold to any person for use as described in section 4063(a)(7).[1]

(K) in the case of any article taxable under section 4061(b), sold on or in connection with the first retail sale of a light-duty truck, as described in section 4061(a)(2), if credit or refund of such tax is not available under any other provisions of law;

(L) in the case of any tire or inner tube taxable under paragraph (1) or (3) of section 4071(a), sold to any person for use as described in section 4221(e)(5)(A); or

(M) in the case of tread rubber taxable under paragraph (4) of section 4071(a), used in the recapping or retreading of a tire sold to any person for use on or in connection with a qualified bus (as defined in section 4221(d)(7)).

Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064[2]

(3) Tax-paid articles used for further manufacture, etc.

If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

[See main edition for text of (A) to (F)]

For purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

[See main volume for text of (4) and (5); (c) to (i)]

(As amended Feb. 10, 1978, Pub. L. 95-227, § 2(b)(4), 92 Stat. 12; Nov. 9, 1978, Pub. L. 95-618, title II, §§ 201(c)(3), 232(b), 233(c)(3), 92 Stat. 3184, 3189, 3192.)

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-618 substituted in subpar. (I) "in the case of any article taxable under section 4061(b), sold for use by the purchaser on or in connection with an automobile bus" for "in the case of a bus chasis or body taxable under section 4061(a), sold to any person for use as described in section 4063(a)(6) or 4221(e)(5)" and added subpars. (L) and (M) and provision following subpar. (M).

Pub. L. 95-227 inserted "(other than coal taxable under section 4121)" following "of any article".

Subsec. (b)(3). Pub. L. 95-227 inserted "(other than coal taxable under section 4121)" following "of any article".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (b)(2), by section 201(c)(3) of Pub. L. 95-618, adding provision relating to non-applicability of subpars. (C) and (D) in cases of tax paid under section 4064 of this title following subpar. (M), applicable with respect to 1980 and later model year automobiles, see section 201(g) of Pub. L. 95-618, set out as an Effective Date note under section 4064 of this title.

Amendment of subsec. (b)(2)(I) by section 232(b) of Pub. L. 95-618, applicable to sales on or after the day of the first calendar month beginning more than 10 days after Nov. 9, 1978, see section 232(c) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 4221 of this title.

Amendment of subsec. (b)(2) by section 233(c)(3) of Pub. L. 95-618, adding subpars. (L) and (M), effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

Amendment by Pub. L. 95-227 applicable with respect to sales after Mar. 31, 1978, see section 2(d) of Pub. L. 95-227, set out as an Effective Date note under section 4121 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4216, 6421, 6612 of this title.

[1] So in original. The period probably should be a semicolon.

[2] So in original. There probably should be a period.

§ 6420. Gasoline used on farms

[See main edition for text of (a) and (b)]

(c) Meaning of terms

For purposes of this section—

[See main edition for text of (1) and (2)]

(3) Farming purposes

Gasoline shall be treated as used for farming purposes only if used—

(A) by the owner, tenant, or operator of a farm, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife, on a farm of which he is the owner, tenant, or operator;

[See main edition for text of (B) to (D)]

(4) Certain farming use other than by owner, etc.

In applying paragraph (3)(A) to a use on a farm for any purpose described in paragraph (3)(A) by any person other than the owner, tenant, or operator of such farm—

(A) the owner, tenant, or operator of such farm shall be treated as the user and ultimate purchaser of the gasoline, except that

(B) if the person so using the gasoline is an aerial applicator who is the ultimate purchaser of the gasoline and the person described in subparagraph (A) waives (at such time and in such form and manner as the Secretary shall prescribe) his right to be treated as the user and ultimate purchaser of the gasoline, then subparagraph (A) of this paragraph shall not apply and the aerial applicator shall be treated as having used such gasoline on a farm for farming purposes.

(5) Gasoline

The term "gasoline" has the meaning given to such term by section 4082(b).

[See main edition for text of (d) to (h)]

(As amended Oct. 14, 1978, Pub. L. 95-458, § 3(a), (c), 92 Stat. 1257.)

AMENDMENTS

1978—Subsec. (c)(3)(A). Pub. L. 95-458, § 3(c), struck out provision that if the use of gasoline is by any person other than the owner, tenant, or operator of a farm, then in applying subsec. (a) of this subparagraph, the owner, tenant, or operator of the farm on which gasoline or a liquid taxable under section 4041 is used would be treated as the user or ultimate purchaser of the gasoline or liquid.

Subsec. (c)(4). Pub. L. 95-458, § 3(a), added subsec. (c)(4). Former subsec. (c)(4) redesignated (c)(5).

Subsec. (c)(5). Pub. L. 95-458, § 3(a), redesignated former subsec. (c)(4) as (c)(5).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(d) of Pub. L. 95-458 provided that: "The amendments made by this section [amending sections 6420 and 6427 of this title] shall take effect on the first day of the first calendar quarter which begins more than 90 days after the date of the enactment of this Act [Oct. 14, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 48, 451, 4084, 6206, 6416, 6421, 6427, 6511, 6612, 6675, 7210, 7603, 7604, 7605, 7609, 7610 of this title; title 49 section 1742.

§ 6421. Gasoline used for certain nonhighway purposes or by local transit systems

(a) Nonhighway uses

Except as provided in subsection (i), if gasoline is used in a qualified business use, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to 1 cent for each gallon of gasoline so used on which tax was paid at the rate of 3 cents a gallon and 2 cents for each gallon of gasoline so used on which tax was paid at the rate of 4 cents a gallon. Except as provided in paragraph (3) of subsection (e) of this section, in the case of gasoline used as a fuel in an aircraft, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the amount determined by multiplying the number of gallons of gasoline so used by the rate at which tax was imposed on such gasoline under section 4081.

(b) Intercity, local, or school buses

(1) Allowance

Except as provided in paragraph (2) and subsection (i), if gasoline is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline an amount equal to the product of the number of gallons of gasoline so used multiplied by the rate at which tax was imposed on such gasoline by section 4081.

(2) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of gasoline used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

[See main edition for text of (c)]

(d) Definitions

For purposes of this section—

(1) Gasoline

The term "gasoline" has the meaning given to such term by section 4082(b).

(2) Qualified business use

(A) In general

The term "qualified business use" means any use by a person in a trade or business of such person or in an activity of such person described in section 212 (relating to production of income) otherwise than as a fuel in a highway vehicle—

(i) which (at the time of such use), is registered, or is required to be registered,

for highway use under the laws of any State or foreign country, or

(ii) which, in the case of a highway vehicle owned by the United States, is used on the highway.

(B) Exception for use in motorboats

The term "qualified business use" does not include any use in a motorboat.

(C) Commercial fishing vessels

For provisions exempting from tax gasoline, special motor fuels, and lubricating oil used for commercial fishing vessels, see—

(i) subsections (a)(3) and (d)(3) of section 4221 (relating to certain tax-free sales),

(ii) section 6416(b)(2)(B) (relating to refund or credit in case of certain uses), and

(iii) section 4041(g)(1) (relating to exemptions from tax on special fuels).

[*See main edition for text of* (e) *to* (g)]

(h) Effective date

This section shall apply only with respect to gasoline purchased before October 1, 1984.

[*See main edition for text of* (i) *and* (j)]

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(10), 92 Stat. 2756; Nov. 9, 1978, Pub. L. 95-618, title II, §§ 222(a)(1), 233(a)(1), (3)(A), 92 Stat. 3186, 3190.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-618, § 222(a)(1)(A), substituted "Except as provided in subsection (i), if gasoline is used in a qualified business use" for "Except as provided in subsection (i), if gasoline is used otherwise than as a fuel in a highway vehicle (1) which (at the time of such use) is registered, or is required to be registered, for highway use under the laws of any State or foreign country, or (2) which, in the case of a vehicle owned by the United States, is used on the highway".

Subsec. (b). Pub. L. 95-618, § 233(a)(1), among other changes, provided for the refund or credit of the taxes paid on gasoline but only to the extent such gasoline is used in a bus engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations.

Subsec. (d)(2). Pub. L. 95-618, § 233(a)(3)(A), redesignated subsec. (d)(3) as (d)(2) and struck out former subsec. (d)(2), which defined "commuter fare revenue".

Subsec. (d)(3). Pub. L. 95-618, §§ 222(a)(1)(B), 233(a)(3)(A), added subsec. (d)(3) and redesignated subsec. (d)(3) as (d)(2).

Subsec. (h). Pub. L. 95-599 substituted "1984" for "1979".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) and addition of subsec. (d)(3) by sections 222(a)(1) of Pub. L. 95-618 applicable with respect to uses after Dec. 31, 1978, see section 222(b) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 4041 of this title.

Amendment of subsec. (b), the deletion of subsec. (d)(2), and the redesignation of subsec. (d)(3) as (d)(2) by section 233(a)(1), (a)(3)(A) of Pub. L. 95-618 effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 39, 4041, 4084, 4483, 6206, 6424, 6511, 6612, 6675, 7210, 7603, 7604, 7605, 7609, 7610 of this title; title 16 section 460*l*-11; title 49 section 1742.

§ 6422. Cross references

[*See main edition for text of* (1) *to* (13)]

(14) for credit or refund in case of deficiency dividends paid by a regulated investment company or real estate investment trust, see section 860.

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 362(d)(4), 92 Stat. 2852.)

AMENDMENTS

1978—Par. (14). Pub. L. 95-600 inserted "regulated investment company or" preceding "real estate investment trust" and substituted "section 860" for "section 859".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

§ 6424. Lubricating oil used for certain nontaxable purposes

(a) Payments

Except as provided in subsection (f), if lubricating oil (other than cutting oils, as defined in section 4092(b), and other than oil which has previously been used) is used—

(1) in a qualified business use (as defined in section 6421(d) (2)), or

(2) in a qualified bus (as defined in section 4221(d)(7)),

the Secretary shall pay (without interest) to the ultimate purchaser of such lubricating oil an amount equal to 6 cents for each gallon of lubricating oil so used.

[*See main edition for text of* (b) *to* (g)]

(As amended Pub. L. 95-618, title II, §§ 222(a)(3), 233(b)(1), (2)(A), Nov. 9, 1978, 92 Stat. 3187, 3191.)

AMENDMENTS

1978—Pub. L. 95-618, § 233(b)(2)(A), in section heading substituted "used for certain nontaxable purposes" for "not used in highway motor vehicles".

Subsec. (a). Pub. L. 95-618, §§ 222(a)(3), 233(b)(1), substituted "subsection (f)" for "subsection (g)" and provisions relating to the use of lubricating oil in a qualified business use (as defined in section 6421(d)(2) or 4221(d)(7)) for provisions relating to the use of lubricating oil otherwise than in a highway motor vehicle.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by section 222(a)(3) of Pub. L. 95-618, substituting provisions relating to qualified business use for provision relating to highway motor vehicle, applicable with respect to uses after Dec. 31, 1978, see section 222(b) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 4041 of this title.

Amendment of subsec. (a) by section 233(b)(1) of Pub. L. 95-618, substituting subsec. (f) for (g) and adding provision relating to a qualified bus, effective on the first day of the first calendar month which

begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95–618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

§ 6427. Fuels not used for taxable purposes

(a) Nontaxable uses

Except as provided in subsection (h), if tax has been imposed under section 4041(a), (b), or (c) on the sale of any fuel and the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary shall pay (without interest) to him an amount equal to—

[See main edition for text of (1) and (2)]

(b) Intercity, local, or school buses

(1) Allowance

Except as provided in paragraph (2) and subsection (h), if any fuel on the sale of which tax was imposed by subsection (a) or (b) of section 4041 is used in an automobile bus while engaged in—

(A) furnishing (for compensation) passenger land transportation available to the general public, or

(B) the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C)),

the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the product of the number of gallons of such fuel so used multiplied by the rate at which tax was imposed on such fuel by subsection (a) or (b) of section 4041.

(2) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(c) Use for farming purposes

Except as provided in subsection (h), if any fuel on the sale of which tax was imposed under section 4041(a), (b), or (c) is used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary shall pay (without interest) to the purchaser an amount equal to the amount of the tax imposed on the sale of the fuel. For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that "liquid taxable under section 4041" shall be substituted for "gasoline" each place it appears in such paragraph (4)).

(d) Use by certain aircraft museums

Except as provided in subsection (h), if—

(1) any gasoline on which tax was imposed by section 4081, or

(2) any fuel on the sale of which tax was imposed under section 4041,

is used by an aircraft museum (as defined in section 4041(h)(2)) in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in section 4041(h)(2)(C), the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.

(e) Use in certain taxicabs

(1) In general

Except as provided in subsection (h), if—

(A) any gasoline on which tax is imposed by section 4081, or

(B) any fuel on the sale of which tax is imposed by section 4041,

is used in a qualified taxicab while engaged exclusively in furnishing qualified taxicab services, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.

(2) Definitions

For purposes of this subsection—

(A) Qualified taxicab services

The term "qualified taxicab services" means the furnishing of nonscheduled passenger land transportation for a fixed fare by a taxicab which is operated by a person who—

(i) is licensed to engage in the trade or business of furnishing such transportation by a Federal, State, or local authority having jurisdiction over a substantial portion of such transportation furnished by such person, and

(ii) is not prohibited under the laws, regulations, or procedures of such Federal, State, or local authority, and is not prohibited by company policy, from furnishing (with consent of the passengers) shared transportation.

(B) Qualified taxicab

Except as provided by subparagraph (C), the term "qualified taxicab" means any land vehicle the passenger capacity of which is less than 10 adults, including the driver.

(C) Certain gas-guzzling taxicabs excluded

The term "qualified taxicab" does not include any vehicle if—

(i) such vehicle was acquired by the person operating such vehicle after 1978,

(ii) the model year of such vehicle is 1978 or later, and

(iii) the fuel economy of the model type of such vehicle is less than or equal to the average fuel economy standard applicable under section 502(a) of the Motor Vehicle Information and Cost Savings Act to the model year of such vehicle.

The preceding sentence shall not apply to any vehicle manufactured by a manufacturer to which an exemption under section 502(c) of the Motor Vehicle Information and Cost Savings Act was granted (or on application could have been granted) for the model year of such vehicle. Terms used in this subparagraph shall have the same meaning as when used in title V of the Motor Vehicle Information and Cost Savings Act.

(3) Termination

This subsection shall not apply after December 31, 1980.

(f) Time for filing claims; period covered

(1) General rule

Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), (b), (c), (d), or (e) by any person with respect to fuel used during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) Exceptions

(A) In general

If—

(i) $1,000 or more is payable under subsections (a), (b), (d), and (e), or

(ii) $50 or more is payable under subsection (e),

to any person with respect to fuel used during any of the first three quarters of his taxable year, a claim may be filed under this section by the purchaser with respect to fuel used during such quarter.

(B) Special rule

If a claim may be filed by any person under subparagraph (A)(ii) but not under subparagraph (A)(i) for any quarter, such person may file a claim under subparagraph (A) for such quarter only with respect to amounts payable under subsection (e).

(C) Time for filing claim

No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

(g) Applicable laws

(1) In general

All provisions of law, including penalties, applicable in respect of the taxes imposed by section 4041 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(h) Income tax credit in lieu of payment

(1) Persons not subject to income tax

Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception

Paragraph (1) shall not apply to a payment of a claim filed under subsection (f)(2).

(3) Allowance of credit against income tax

For allowances of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section 39.

(i) Regulations

The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(j) Cross references

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(As amended Pub. L. 95-458, § 3(b), Oct. 14, 1978, 92 Stat. 1257; Pub. L. 95-599, title V, § 505(a), (b), (c)(2)-(4), Nov. 6, 1978, 92 Stat. 2758-2760; Pub. L. 95-600, title VII, § 703(*l*)(3), Nov. 6, 1978, 92 Stat. 2942; Pub. L. 95-618, title II, § 233(a)(2), Nov. 9, 1978, 92 Stat. 3190.)

REFERENCES IN TEXT

The Motor Vehicle Information and Cost Savings Act, referred to in subsec. (e)(2)(C), is Pub. L. 92-513, Oct. 20, 1972, 86 Stat. 947, as amended. Section 502(a) and (c) and title V of the Act were added by Pub. L. 94-163, title III, § 301, Dec. 22, 1975, 89 Stat. 901, and are classified respectively to section 2002(a) and (c) and subchapter V (§ 2001 et seq.) of chapter 46 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 15 and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-599, § 505(c)(2), substituted "subsection (h)" for "subsection (g)".

Subsec. (b). Pub. L. 95-618, among other changes, provided for the refund or credit of the taxes paid on fuel pursuant to section 4041(a) or (b) but only to the extent such fuel is used in a bus engaged in furnishing (for compensation) passenger land transportation available to the general public or in school bus transportation operations.

Pub. L. 95-599, § 505(c)(2), substituted "subsection (h)" for "subsection (g)". See Effective Date of 1978 Amendment note set out below.

Subsec. (c). Pub. L. 95-599, § 505(c)(2), substituted "subsection (h)" for "subsection (g)".

Pub. L. 95-458 substituted provision requiring that the rules of section 6420(c)(4) be applied in determining the user and purchaser of fuel if the fuel was used on a farm by any person other than the owner, tenant, or operator for provision which deemed the owner, tenant, or operator of the farm as the user and purchaser if fuel was used on the farm by any other person.

Subsec. (d). Pub. L. 95-600 struck out "or his delegate" following "Secretary".

Pub. L. 95-599, § 505(c)(2), substituted "subsection (h)" for "subsection (g)".

Subsec. (e). Pub. L. 95-599, § 505(a)(2), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 95-599, § 505(a)(1), (b), (c)(3), redesignated former subsec. (e) as (f) and, as so redesignated, in par. (1), substituted "(d), or (e)" for "or (d)" and amended par. (2) generally, designating existing provisions as subpars. (A)(i) and (c) and adding subpars. (A)(ii) and (B). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95-599, § 505(a)(1), redesignated former subsec. (f) as (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95-599, § 505(a)(1), (c)(4), redesignated former subsec. (g) as (h) and, as so redesignated, substituted "(f)(2)" for "(e)(2)". Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 95-599, § 505(a)(1), redesignated former subsecs. (h) and (i) as (i) and (j), respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

Amendment by Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Section 505(d) of Pub. L. 95-599 provided that: "The amendments made by this section [amending sections 39, 6427, 7210, 7603, 7604, 7605, 7609 and 7610 of this title] shall take effect on January 1, 1979."

Amendment by Pub. L. 95-458 effective on the first day of the first calendar quarter beginning more than 90 days after Oct. 14, 1978, see section 3(d) of Pub. L. 95-458 set out as an Effective Date of 1978 Amendment note under section 6420 of this title.

CHAPTER 66—LIMITATIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6037, 6039B, 6207, 7422 of this title.

Subchapter A—Limitations on Assessment and Collection

§ 6501. Limitations on assessment and collection

[See main edition for text of (a) to (d)]

(e) Substantial omission of items

Except as otherwise provided in subsection (c)—

[See main edition for text of (1) and (2)]

(3) Excise taxes

In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

[See main edition for text of (f) and (g)]

(h) Net operating loss or capital loss carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

[See main edition for text of (i)]

(j) Certain credit carrybacks

(1) In general

In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) Credit carryback defined

For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

[See main edition for text of (k) and (l)]

(m) Tentative carryback adjustment assessment period

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, an investment credit carryback, a work incentive program carryback, or a new employee credit carryback to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(n) Special rule for chapter 42 and similar taxes

(1) In general

For purposes of any tax imposed by chapter 42 (other than section 4940) or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, or trust (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred.

For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

[See main edition for text of (2) and (3)]

[(o), (p) Repealed. Pub. L. 95-628, § 8(c)(1)(C), Nov. 10, 1978, 92 Stat. 3632]

(q) Special rules for partnership items of federally registered partnerships

(1) In general

In the case of any tax imposed by subtitle A with respect to any person, the period for assessing a deficiency attributable to any partnership item of a federally registered partnership shall not expire before the later of—

(A) the date which is 4 years after the date on which the partnership return of the federally registered partnership for the partnership taxable year in which the item arose was filed (or, later, if the date prescribed for filing the return), or

(B) if the name or address of such person does not appear on the partnership return, the date which is 1 year after the date on which such information is furnished to the Secretary in such manner and at such place as he may prescribe by regulations.

(2) Partnership item defined

For purposes of this subsection, the term "partnership item" means—

(A) any item required to be taken into account for the partnership taxable year under any provision of subchapter K of chapter 1 to the extent that regulations prescribed by the Secretary provide that for purposes of this subtitle such item is more appropriately determined at the partnership level than at the partner level, and

(B) any other item to the extent affected by an item described in subparagraph (A).

(3) Extension by agreement

The extensions referred to in subsection (c)(4), insofar as they relate to partnership items, may, with respect to any person, be consented to—

(A) except to the extent the Secretary is otherwise notified by the partnership, by a general partner of the partnership, or

(B) by any person authorized to do so by the partnership in writing.

(4) Federally registered partnership

For purposes of this subsection, the term "federally registered partnership" means, with respect to any partnership taxable year, any partnership—

(A) interests in which have been offered for sale at any time during such taxable year or a prior taxable year in any offering required to be registered with the Securities and Exchange Commission, or

(B) which, at any time during such taxable year or a prior taxable year, was subject to the annual reporting requirements of the Securities and Exchange Commission which relate to the protection of investors in the partnership.

(q) Deficiency attributable to election under section 44B

The period for assessing a deficiency attributable to any election under section 44B (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(As amended May 23, 1977, Pub. L. 95-30, title II, § 202(d)(4)(A), (5)(B), 91 Stat. 149, 151; Feb. 10, 1978, Pub. L. 95-227, § 4(d)(4), (5), 92 Stat. 23; Nov. 6, 1978, Pub. L. 95-600, title II, § 212(a), title III, § 321(b)(2), title V, § 504(b)(3), title VII, §§ 701(t)(3)(A), 703(n), (p)(2), 92 Stat. 2818, 2835, 2881, 2912, 2943, 2944; Nov. 10, 1978, Pub. L. 95-628, § 8(c)(1), 92 Stat. 3631.)

CODIFICATION

Two subsecs. (q) were added by Pub. L. 95-600, §§ 212(a) and 321(b)(2). See 1978 Amendment note below.

AMENDMENTS

1978—Subsec. (e)(3). Pub. L. 95-600, § 701(t)(3)(A), substituted "43, or 44" for "or 43", which required no change in text in view of the identical amendment by section 4(d)(4) of Pub. L. 95-227.

Pub. L. 95-227, § 4(d)(4), substituted "43, or 44" for "or 43".

Subsec. (h). Pub. L. 95-600, § 703(n), (p)(2), substituted "section 6213(b)(3)" for "section 6213(b)(2)" and struck out provisions relating to the assessment of a deficiency attributable to the application of a net operating loss carryback.

Subsec. (j). Pub. L. 95-628, § 8(c)(1)(A), substituted in the catchline "Certain credit carrybacks" for "Investment credit carrybacks", designated existing provision as par. (1), and in par. (1) as so designated, added subpar. catchline "In general" and in text, substituted "credit carryback" for "investment credit carryback" in two instances and "unused credit" for "unused investment credit", inserted reference to other credit carryback, and substituted reference to section 6213(b)(3) for 6213(b)(2), and added par. (2).

Pub. L. 95-600, § 703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (m). Pub. L. 95-628, § 8(c)(1)(B), struck out references to subsecs. (o) and (p) in two instances.

Pub. L. 95-600, § 504(b)(3), added "and refund" following "tentative carryback".

Subsec. (n). Pub. L. 95-227, § 4(d)(5), in the subsec. catchline added "and similar" following "42", and in par. (1) added reference to section 4975 and inserted ", plan, or trust (as the case may be)" following "foundation".

Subsec. (o). Pub. L. 95-628, § 8(c)(1)(C), struck out subsec. (o), which related to work incentive program credit carrybacks.

Pub. L. 95-600, § 703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (p). Pub. L. 95-628, § 8(c)(1)(C), struck out subsec. (p), which related to new employee credit carrybacks.

Subsec. (q). Pub. L. 95-600, § 212(a), added subsec. (q), relating to special rules for partnership items of Federally registered partnerships.

Pub. L. 95-600, § 321(b)(2), added subsec. (q), relating to deficiency attributable to election under section 44B.

1977—Subsec. (m). Pub. L. 95-30, § 202(d)(5)(B), added references to new employee credit carrybacks and to subsec. (p).

Subsec. (p). Pub. L. 95-30, § 202(d)(4)(A), added subsec. (p).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-628 applicable to carrybacks arising in taxable years beginning after Nov. 10,

1978, see section 8(d) of Pub. L. 95-628, set out as an Effective Date of 1978 Amendment note under section 6511 of this title.

Section 212(c) of Pub. L. 95-600 provided that: "The amendments made by this section [adding subsec. (q) of this section, relating to special rules for partnership items of Federally registered partnerships, and amending sections 6511(g), (h) and 6512(b)(2) of this title] shall apply to partnership items arising in partnership taxable years beginning after December 31, 1978."

Addition of subsec. (q) by section 321(b)(2) of Pub. L. 95-600, relating to a deficiency attributable to election under section 44B, applicable to amounts paid or incurred after Dec. 31, 1978, in taxable years ending after such date, see section 321(d)(1) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 51 of this title.

Amendment of subsec. (m) by section 504(b)(3) of Pub. L. 95-600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6411 of this title.

Amendment of subsec. (e)(3) by section 701(t)(3)(A) of Pub. L. 95-600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 859 of this title.

Amendment of subsec. (h) by section 703(p)(2) of Pub. L. 95-600, striking out provisions relating to the assessment of a deficiency attributable to the application of a net operating loss carryback applicable with respect to losses sustained in taxable years ending after Nov. 6, 1978, see section 703(p)(4) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 172 of this title.

Amendment of subsec. (h), (j), (o), of this section by section 703(n) of Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 250, 302, 303, 547, 551, 860, 1033, 1039, 1102, 2016, 2040, 2053, 2204, 5006, 5703, 6013, 6503, 6511, 7609 of this title.

§ 6502. Collection after assessment

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 250, 302, 6013, 6503, 6672, 6694 of this title.

§ 6503. Suspension of running of period of limitation

[*See main edition for text of* (a) *to* (f)]

(g) Suspension pending correction

The running of the periods of limitations provided in sections 6501 and 6502 on the making of assessments or the collection by levy or a proceeding in court in respect of any tax imposed by chapter 42 or section 507, 4971, 4975, 4985, or 4986 shall be suspended for any period described in section 507(g)(2) or during which the Secretary has extended the time for making correction under section 4931(e)(4), 4942(j)(2), 4943(d)(3), 4944(e)(3), 4945(i)(2), 4971(c)(3), or 4975(f)(6), 4985(e)(4), or 4986(e)(2).

(h) Cross references

For suspension in case of—

[*See main edition for text of* (1) *to* (4)]

(5) Deficiency dividends in the case of a regulated investment company or a real estate investment trust, see section 860(h).

[*See main edition for text of* (i)]

(As amended Feb. 10, 1978, Pub. L. 95-227, § 4(d)(6), 92 Stat. 23; Nov. 6, 1978, Pub. L. 95-600, title III, § 362(d)(5), 92 Stat. 2852.)

REFERENCES IN TEXT

Sections 4985 and 4986, referred to in subsec. (g), have not been enacted as sections of this title. Reference probably should be to sections 4951 and 4952 of this title.

CODIFICATION

Amendment by Pub. L. 95-600 has been executed to subsec. (h)(5), not to subsec. (i)(5) as provided for in the directory language of section 362(d)(5) of Pub. L. 95-600, as the probable intent of Congress. See 1978 Amendment note set out below.

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-227 added provisions relating to sections 4985 and 4986 and substituted "4975(f)(6)" for "4975(f)(4)".

Subsec. (h)(5). Pub. L. 95-600 substituted "in the case of a regulated investment company or a real estate investment trust, see section 860(h)" for "of a real estate investment trust, see section 859(f)". See Codification note above.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

Amendment by Pub. L. 95-227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95-227, set out as an Effective Date note under section 192 of this title.

§ 6504. Cross references

For limitation period in case of—

(1) Adjustments to accrued foreign taxes, see section 905(c).

(2) Change of treatment with respect to itemized deductions and zero bracket amount where taxpayer and his spouse make separate returns, see section 63(g)(5).

(3) Involuntary conversion of property, see section 1033(a)(2)(C) and (D).

(4) Gain upon sale or exchange of principal residence, see section 1034(j).

(5) Application by fiduciary for discharge from personal liability for estate tax, see section 2204.

(6) Insolvent banks and trust companies, see section 7507.

(7) Service in a combat zone, etc., see section 7508.

(8) Claims against transferees and fiduciaries, see chapter 71.

(9) Assessments to recover excessive amounts paid under section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), 6424

(relating to lubricating oil used for certain nontaxable purposes), or 6427 (relating to fuels not used for taxable purposes) and assessments of civil penalties under section 6675 for excessive claims under section 6420, 6421, 6424, or 6427, see section 6206.

(10) Assessment and collection of interest, see section 6601(g).

(11) Assessment of civil penalties under section 6694 or 6695, see section 6696(d)(1).

(As amended Oct. 4, 1976, Pub. L. 94-455, title XII, § 1203(h)(2), title XIX, 1901(b)(31)(D), (36)(C), (37)(D), (39)(B), 1906(a)(32), 90 Stat. 1694, 1800, 1802, 1803, 1829; May 23, 1977, Pub. L. 95-30, title I, § 101(d)(16), 91 Stat. 134; Nov. 6, 1978, Pub. L. 95-600, title IV, § 405(c)(6), 92 Stat. 2871; Nov. 9, 1978, Pub. L. 95-618, title II, § 233(b)(2)(D), 92 Stat. 3191.)

CODIFICATION

As originally enacted, section 1901(b)(37)(D) of Pub. L. 94-455 directed that par. (6) of section 6515 of this title be repealed. This amendment was executed to par. (6) of this section, which referred to section 1335 for loss recoveries where the prior benefits rule had been elected, to reflect the probable intent of Congress. Pub. L. 95-600, title VII, § 703(j)(10), 92 Stat. 2942, amended the directory language of section 1901(b)(37)(D) of Pub. L. 94-455 to provide that par. (6) of this section be repealed instead of par. (6) of section 6515 of this title. Former par. (10) of this section was subsequently redesignated as par. (6) by section 1906(a)(32)(B) of Pub. L. 94-455. See 1976 Amendment note set out in the main edition of the 1976 Code.

AMENDMENTS

1978—Par. (4). Pub. L. 95-600 substituted "principal residence" for "residence".

Par. (9). Pub. L. 95-618 substituted "used for certain nontaxable purposes" for "not used in highway motor vehicles".

1977—Par. (2). Pub. L. 95-30 substituted "treatment with respect to itemized deductions and zero bracket amount where taxpayer and his spouse make separate returns, see section 63(g)(5)" for "election with respect to the standard deduction where taxpayer and his spouse make separate returns, see section 144(b)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

Amendment by Pub. L. 95-600 applicable to sales and exchanges of residences after July 26, 1978, in taxable years ending after such date, see section 405(d) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 1034 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

Subchapter B—Limitations on Credit or Refund

§ 6511. Limitations on credit or refund

[See main edition for text of (a) to (c)]

(d) Special rules applicable to income taxes

[See main edition for text of (1)]

(2) Special period of limitation with respect to net operating loss or capital loss carrybacks

(A) Period of limitation

If the claim for credit or refund relates to an overpayment attributable to a net operating loss carryback or a capital loss carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the net operating loss or net capital loss which results in such carryback, or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later; except that with respect to an overpayment attributable to the creation of, or an increase in a net operating loss carryback as a result of the elimination of excessive profits by a renegotiation (as defined in section 1481(a)(1)(A)), the period shall not expire before the expiration of the 12th month following the month in which the agreement or order for the elimination of such excessive profits becomes final. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable to the extent of the amount of the overpayment attributable to such carryback.

[See main edition for text of (B); (3)]

(4) Special period of limitation with respect to certain credit carrybacks

(A) Period of limitation

If the claim for credit or refund relates to an overpayment attributable to a credit carryback, in lieu of the 3-year period of limitation prescribed in subsection (a), the period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback (or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year) or the period prescribed in subsection (c) in respect of such taxable year, whichever expires later. In the case of such a claim, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is appli-

cable, to the extent of the amount of the overpayment attributable to such carryback.

(B) Applicable rules

If the allowance of a credit or refund of an overpayment of tax attributable to a credit carryback is otherwise prevented by the operation of any law or rule of law other than section 7122, relating to compromises, such credit or refund may be allowed or made, if claim therefor is filed within the period provided in subparagraph (A) of this paragraph. In the case of any such claim for credit or refund, the determination by any court, including the Tax Court, in any proceeding in which the decision of the court has become final, shall not be conclusive with respect to any credit, and the effect of such credit, to the extent that such credit is affected by a credit carryback which was not in issue in such proceeding.

(C) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" means any investment credit carryback, work incentive program credit carryback, and new employee credit carryback.

[*See main edition for text of (5) and (6)*]

(7) Special period of limitation with respect to amounts included in income subsequently recaptured under qualified plan termination

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

[(8) Redesignated (7)]

[(9) Repealed. Pub. L. 95–628, § 8(b)(2)(A), Nov. 10, 1978, 92 Stat. 3631]

[*See main edition for text of (e) and (f)*]

(g) Special rule for partnership items of federally registered partnerships

(1) In general

In the case of any tax imposed by subtitle A with respect to any person, the period for filing a claim for credit or refund of any overpayment attributable to any partnership item of a federally registered partnership shall not expire before the later of—

(A) the date which is 4 years after the date prescribed by law (including extensions thereof) for filing the partnership return for the partnership taxable year in which the item arose, or

(B) if an agreement under the provisions of section 6501(c)(4) extending the period for the assessment of any deficiency attributable to such partnership item is made before the date specified in subparagraph (A), the date 6 months after the expiration of such extension.

In any case to which the preceding sentence applies, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in subsection (b)(2) or (c), whichever is applicable.

(2) Definitions

For purposes of this subsection, the terms "partnership item" and "federally registered partnership" have the same meanings as such terms have when used in section 6501(q).

(h) Cross references

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011(c), 2014(b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(c).

(7) For a period of limitations for refund of an overpayment of penalties imposed under section 6694 or 6695, see section 6696(d)(2).

(As amended May 23, 1977, Pub. L. 95–30, title II, § 202(d)(4)(B), 91 Stat. 149; Nov. 6, 1978, Pub. L. 95–600, title II, § 212(b)(1), title VII, § 703(p)(3), 92 Stat. 2819, 2944; Nov. 10, 1978, Pub. L. 95–628, § 8(a), (b), 92 Stat. 3630, 3631.)

REFERENCES IN TEXT

Section 4045 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(7),[2] is classified to section 1345 of Title 29, Labor.

AMENDMENTS

1978—Subsec. (d)(2)(A). Pub. L. 95–628, § 8(a), substituted "3 years after the time prescribed by law for filing the return (including extensions thereof) for" for "with the expiration of the 15th day of the 40th month (or the 39th month, in the case of a corporation) following the end of".

Pub. L. 95–600, § 703(p)(3), struck out provisions relating to the period of limitations with respect to an overpayment attributable to a net operating loss carryback to any year on account of a certification issued to the taxpayer under section 317 of the Trade Expansion Act of 1962.

Subsec. (d)(4). Pub. L. 95–628, § 8(b)(1), substituted in the heading "certain credit carrybacks" for "investment credit carrybacks", in subpar. (A), substituted "a credit carryback" for "an investment credit carryback", "period shall be that period which ends 3 years after the time prescribed by law for filing the return (including extensions thereof) for the taxable year of the unused credit which results in such carryback" for "period shall be that period which ends with the expiration of the 15th day of the 40th month (or 39th month, in the case of a corporation) following the end of the taxable year of the unused investment credit which results in such carryback", and "(or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, the period shall be that period which ends 3 years after the time prescribed by law for filing the return, including extensions thereof, for such subsequent taxable year)" for

"(or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback from a subsequent taxable year, the period shall be that period which ends with the expiration of the 15th day of the 40th month, or 39th month, in the case of a corporation, following the end of such subsequent taxable year),", in subpar. (B), substituted "a credit carryback" for "an investment credit carryback", "any credit" for "the investment credit", and "affected by a credit carryback" for "affected by a carryback"; and added subpar. (C).

Subsec. (d)(7). Pub. L. 95-628, § 8(b)(2), struck out par. (7), which provided for a special period of limitation with respect to work incentive program credit carrybacks, and redesignated former par. (8) as (7).

Subsec. (d)(8). Pub. L. 95-628, § 8(b)(2)(B), redesignated former par. (8) as (7).

Subsec. (d)(9). Pub. L. 95-628, § 8(b)(2)(A), struck out par. (9), which provided for a special period of limitation with respect to new employee credit carrybacks.

Subsec. (g). Pub. L. 95-600, § 212(b)(1), added subsec. (g) and redesignated former subsec. (g) as (h).

Subsec. (h). Pub. L. 95-600, § 212(b)(1), redesignated former subsec. (g) as (h).

1977—Subsec. (d)(9). Pub. L. 95-30 added subsec. (d)(9).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 8(d) of Pub. L. 95-628 provided that: "The amendments made by this section [to sections 6501, 6511(d), 6601(d) and 6611(f) of this title] shall apply to carrybacks arising in taxable years beginning after the date of the enactment of this Act [Nov. 10, 1978]."

Addition of subsec. (g) and redesignation of former (g) as (h) by section 212(b)(1) of Pub. L. 95-600 applicable to partnership items arising in partnership taxable years beginning after Dec. 31, 1978, see section 212(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6501 of this title.

Amendment of subsec. (d)(2)(A) by section 703(p)(3) of Pub. L. 95-600 applicable with respect to losses sustained in taxable years ending Nov. 6, 1978, see section 703(p)(4) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 172 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2011, 2014, 2055, 6013, 6501, 6512, 6513, 6601, 6611, 6901 of this title.

§ 6512. Limitations in case of petition to Tax Court

[See main edition for text of (a)]

(b) Overpayment determined by Tax Court

[See main edition for text of (1)]

(2) Limit on amount of credit or refund

No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(A) after the mailing of the notice of deficiency,

(B) within the period which would be applicable under section 6511(b)(2), (c), (d), or (g), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the Tax Court finds that there is an overpayment, or

(C) within the period which would be applicable under section 6511(b)(2), (c), (d), or (g), in respect of any claim for refund filed within the applicable period specified in section 6511 and before the date of the mailing of the notice of deficiency—

[See main edition for text of (i) to (iii)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title II, § 212(b)(2), 92 Stat. 2819.)

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-600 substituted "(c), (d), or (g)" for "(c), or (d)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to partnership items arising in partnership taxable years beginning after Dec. 31, 1978, see section 212(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendments note under section 6501 of this title.

§ 6515. Cross references

For limitations in case of—

[See main edition for text of (1) to (5)]

(6) Deficiency dividends of a regulated investment company or real estate investment trust, see section 860.

(As amended Oct. 4, 1976, Pub. L. 94-455, title XVI, § 1601(f)(3), title XIX, §§ 1901(b)(36)(D), (37)(E), 90 Stat. 1746, 1802, 1803; Nov. 6, 1978, Pub. L. 95-600, title III, § 362(d)(4), 92 Stat. 2852.)

CODIFICATION

The amendment by section 362(d)(4) of Pub. L. 95-600 was executed to par. (6) of this section instead of par. (5) of this section, as directed by section 362(d)(4) of Pub. L. 95-600, to reflect the probable intent of Congress.

AMENDMENTS

1978—Par. (6). Pub. L. 95-600 inserted "regulated investment company or" preceding "real estate investment trust" and substituted "section 860" for "section 859". See Codification note above.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

CHAPTER 67—INTEREST

Subchapter A—Interest on Underpayments

§ 6601. Interest on underpayment, nonpayment, or extensions of time for payment, of tax

[See main edition for text of (a) to (c)]

(d) Income tax reduced by carryback or adjustment for certain unused deductions

[See main edition for text of (1)]

(2) Certain credit carrybacks

(A) In general

If any credit allowed for any taxable year is increased by reason of a credit carryback, such increase shall not affect the computation of interest under this section for the period ending with the last day of the taxable year in which the credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such increase shall not affect the computation of interest under this section for the period ending with the last day of such subsequent taxable year.

(B) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C)."

[See main edition for text of (3)]

[(4) and (5). Repealed. Pub. L. 95–628, § 8(c)(2)(B), Nov. 10, 1978, 92 Stat. 3632]

[See main edition for text of (e) to (k)]

(As amended May 23, 1977, Pub. L. 95–30, title II, § 202(d)(4)(C), 91 Stat. 150; Nov. 10, 1978, Pub. L. 95–628, § 8(c)(2), 92 Stat. 3632.)

Amendments

1978—Subsec. (d)(2). Pub. L. 95–628, § 8(c)(2)(A), substituted in the catchline "Certain credit carrybacks" for "Investment credit carryback", designated existing provision as subpar. (A), and in subpar. (A) as so designated, inserted subpar. catchline "In general" and in text extended the application of the provision to credit carrybacks, previously limited to investment credit carrybacks, included other credit carrybacks, and added subpar. (B).

Subsec. (d)(4), (5). Pub. L. 95–628, § 8(c)(2)(B), struck out pars. (4) and (5), which provided for work incentive program credit carrybacks and new employee credit carrybacks, respectively.

1977—Subsec. (d)(5). Pub. L. 95–30 added subsec. (d)(5).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub. L. 95–628, set out as an Effective Date of 1978 Amendment note under section 6511 of this title.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 44B of this title.

Interest Not Payable on Underpayments Created or Increased by Tax Reform Act of 1976

Section 305 of Pub. L. 95–30 provided that: " No interest shall be payable for any period before April 16, 1977 (March 16, 1977, in the case of a corporation), on any underpayment of a tax imposed by the Internal Revenue Code of 1954, to the extent that such underpayment was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94–455]."

Section Referred to in Other Sections

This section is referred to in sections 860, 1397, 5684, 6166, 6166A, 6167, 6504, 6621, 7404 of this title; title 29 section 1307; title 46 section 1177.

Subchapter B—Interest on Overpayments

§ 6611. Interest on overpayments

[See main edition for text of (a) to (e)]

(f) Refund of income tax caused by carryback or adjustment for certain unused deductions

[See main edition for text of (1)]

(2) Certain credit carrybacks

(A) In general

For purposes of subsection (a), if any overpayment of tax imposed by subtitle A results from a credit carryback, such overpayment shall be deemed not to have been made before the close of the taxable year in which such credit carryback arises, or, with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, such overpayment shall be deemed not to have been made before the close of such subsequent taxable year.

(B) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" has the meaning given such term by section 6511(d)(4)(C).

[See main edition for text of (3)]

[(4) and (5) Repealed. Pub. L. 95–628, § 8(c)(3)(B), Nov. 10, 1978, 92 Stat. 3632]

[See main edition for text of (g) and (h)]

(As amended May 23, 1977, Pub. L. 95–30, title II, § 202(d)(4)(D), 91 Stat. 150; Nov. 10, 1978, Pub. L. 95–628, § 8(c)(3), 92 Stat. 3632.)

Amendments

1978—Subsec. (f)(2). Pub. L. 95–628, § 8(c)(3)(A), substituted in the catchline "Certain credit carrybacks" for "Investment credit carryback", designated existing provision as subpar. (A), and in subpar. (A) as so designated inserted subpar. catchline "In general" and extended the application of the provision to credit carrybacks, previously limited to investment credit carrybacks, included other credit carrybacks, and added subpar. (B).

Subsec. (f)(4), (5). Pub. L. 95–628, § 8(c)(3)(B), struck out pars. (4) and (5), which provided for work incentive program credit carrybacks and new employee credit carrybacks, respectively.

1977—Subsec. (f)(5). Pub. L. 95–30 added subsec. (f)(5).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–628 applicable to carrybacks arising in taxable years beginning after Nov. 10,

1978, see section 8(d) of Pub. L. 95-628, set out as an Effective Date of 1978 Amendment note under section 6511 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95-30, set out as an Effective Date note under section 44B of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1397, 6621 of this title.

Subchapter C—Determination of Interest Rate

§ 6621. Determination of rate of interest

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 167, 644, 6332, 6601, 6602, 6611, 6654, 6655, 7426 of this title; title 19 section 1592; title 28 section 2411.

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Subchapter A—Additions to the Tax and Additional Amounts

§ 6654. Failure by individual to pay estimated income tax

[See main edition for text of (a) to (c)]

(d) Exception

Notwithstanding the provisions of the preceding subsections, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least—

[See main edition for text of (1)]

(2) An amount equal to 80 percent (66⅔ percent in the case of individuals referred to in section 6073(b), relating to income from farming or fishing) of the tax for the taxable year computed by placing on an annualized basis the taxable income for the months in the taxable year ending before the month in which the installment is required to be paid and by taking into account the adjusted self-employment income (if the net earnings from self-employment (as defined in section 1402(a)) for the taxable year equal or exceed $400). For purposes of this paragraph—

(A) The taxable income shall be placed on an annualized basis under regulations prescribed by the Secretary.

[See main edition for text of (B), (3) and (4); (e)]

(f) Tax computed after application of credits against tax

For purposes of subsections (b) and (d), the term "tax" means—

(1) the tax imposed by this chapter 1 (other than by section 55 or 56), plus

[See main edition for text of (2) and (3); (g)]

(As amended May 23, 1977, Pub. L. 95-30, title I, § 102(b)(16), 91 Stat. 139; Nov. 6, 1978, Pub. L. 95-600, title IV, § 421(e)(9), 92 Stat. 2877.)

AMENDMENTS

1978—Subsec. (f)(1). Pub. L. 95-600 substituted "section 55 or 56" for "section 56".

1977—Subsec. (d)(2)(A). Pub. L. 95-30 substituted provisions directing that the placement of taxable income on an annualized basis be accomplished under regulations prescribed by the Secretary for provisions which had spelled out in detail the formula under which taxable income would be placed on an annualized basis.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 421(g) of Pub. L. 95-600, set out as an Effective Date note under section 55 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

ESTIMATED TAX UNDERPAYMENTS CREATED OR INCREASED BY TAX REFORM ACT OF 1976

Section 303 of Pub. L. 95-30 provided that: "No addition to the tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 (relating to failure to pay estimated income tax) for any period before April 16, 1977 (March 16, 1977, in the case of a taxpayer subject to section 6655), with respect to any underpayment, to the extent that such underpayment was created or increased by any provision of the Tax Reform Act of 1976 [Pub. L. 94-455]."

§ 6655. Failure by corporation to pay estimated income tax

[See main edition for text of (a) to (d)]

(e) Definition of tax

For purposes of subsections (b) and (d), the term "tax" means the excess of—

(1) the tax imposed by section 11 or 1201(a), or subchapter L of chapter 1, whichever is applicable, over

(2) the credits against tax provided by part IV of subchapter A of chapter 1.

[See main edition for text of (f) and (g)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(20)(B), 92 Stat. 2824.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-600 struck out provisions relating to the corporation's temporary estimated tax exemption.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1978, see section 301(c) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 11 of this title.

Subchapter B—Assessable Penalties

Sec.
6697. Assessable penalties with respect to liability for tax of qualified investment entities.
6698. Failure to file information with respect to carryover basis property.

Sec.
6698. Failure to file partnership return.
6699. Assessable penalties relating to ESOP.

AMENDMENTS

1978—Pub. L. 95-600, title I, § 141(c)(2), title II, § 211(b), title III, § 362(d)(9), title VII, § 702(r)(1)(C), Nov. 6, 1978, 92 Stat. 2794, 2818, 2852, 2938, redesignated item 6694 "Failure to file information with respect to carryover basis property" as item 6698, substituted in item 6697 "qualified investment entities" for "real estate investment trusts", and added item 6698 "Failure to file partnership return" and item 6699 "Assessable penalties relating to ESOP".

§ 6672. Failure to collect and pay over tax, or attempt to evade or defeat tax

(a) General rule

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 for any offense to which this section is applicable.

(b) Extension of period of collection where bond is filed

(1) In general

If, within 30 days after the day on which notice and demand of any penalty under subsection (a) is made against any person, such person—

(A) pays an amount which is not less than the minimum amount required to commence a proceeding in court with respect to his liability for such penalty,

(B) files a claim for refund of the amount so paid, and

(C) furnishes a bond which meets the requirements of paragraph (3),

no levy or proceeding in court for the collection of the remainder of such penalty shall be made, begun, or prosecuted until a final resolution of a proceeding begun as provided in paragraph (2). Notwithstanding the provisions of section 7421(a), the beginning of such proceeding or levy during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(2) Suit must be brought to determine liability for penalty

If, within 30 days after the day on which his claim for refund with respect to any penalty under subsection (a) is denied, the person described in paragraph (1) fails to begin a proceeding in the appropriate United States district court (or in the Court of Claims) for the determination of his liability for such penalty, paragraph (1) shall cease to apply with respect to such penalty, effective on the day following the close of the 30-day period referred to in this paragraph.

(3) Bond

The bond referred to in paragraph (1) shall be in such form and with such sureties as the Secretary may by regulations prescribe and shall be in an amount equal to 1½ times the amount of excess of the penalty assessed over the payment described in paragraph (1).

(4) Suspension of running of period of limitations on collection

The running of the period of limitations provided in section 6502 on the collection by levy or by a proceeding in court in respect of any penalty described in paragraph (1) shall be suspended for the period during which the Secretary is prohibited from collecting by levy or a proceeding in court.

(5) Jeopardy collection

If the Secretary makes a finding that the collection of the penalty is in jeopardy, nothing in this subsection shall prevent the immediate collection of such penalty.

(As amended Nov. 10, 1978, Pub. L. 95-628, § 9(a), 92 Stat. 3633.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-628 designated existing provisions as subsec. (a) and added subsec. catchline "General rule".

Subsec. (b). Pub. L. 95-628 added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 9(c) of Pub. L. 95-628 provided that: "The amendments made by this section [amending sections 6672, 7103(a), and 7421(a) of this title] shall apply with respect to penalties assessed more than 60 days after the date of the enactment of this Act [Nov. 10, 1978]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7103, 7421, 7501 of this title.

§ 6675. Excessive claims with respect to the use of certain fuels or lubricating oil

(a) Civil penalty

In addition to any criminal penalty provided by law, if a claim is made under section 6420 (relating to gasoline used on farms), 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), 6424 (relating to lubricating oil used for certain nontaxable purposes), or 6427 (relating to fuels not used for taxable purposes) for an excessive amount, unless it is shown that the claim for such excessive amount is due to reasonable cause, the person making such claim shall be liable to a penalty in an amount equal to whichever of the following is the greater:

(1) Two times the excessive amount; or

(2) $10.

[See main edition for text of (b) and (c)]

(As amended Nov. 9, 1978, Pub. L. 95-618, title II, § 233(b)(2)(D), 92 Stat. 3191.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-618 substituted "used for certain nontaxable purposes" for "not used in highway motor vehicles".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-618 effective on the first day of the first calendar month which begins more than 10 days after Nov. 9, 1978, see section 233(d) of

Pub. L. 95-618, set out as an Effective Date of 1978 Amendment note under section 39 of this title.

§ 6694. Understatement of taxpayer's liability by income tax return preparer

CODIFICATION

A second section 6694, relating to failure to file information with respect to carryover basis property, which was added by Pub. L. 94-455, § 2005(d)(2), was renumbered section 6698 by Pub. L. 95-600.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6103, 7407, 7421 of this title.

[§ 6694. Renumbered § 6698]

CODIFICATION

Section 6694 relating to failure to file information with respect to carryover basis property, which was added by Pub. L. 94-455, § 2005(d)(2), was renumbered section 6698 by Pub. L. 95-600.

§ 6695. Other assessable penalties with respect to the preparation of income tax returns for other persons

[See main edition for text of (a) to (e)]

(f) Negotiation of check

Any person who is an income tax return preparer who endorses or otherwise negotiates (directly or through an agent) any check made in respect of the taxes imposed by subtitle A which is issued to a taxpayer (other than the income tax return preparer) shall pay a penalty of $500 with respect to each such check. The preceding sentence shall not apply with respect to the deposit by a bank (within the meaning of section 581) of the full amount of the check in the taxpayer's account in such bank for the benefit of the taxpayer.

(As amended Pub. L. 95-600, title VII, § 701(cc)(1), Nov. 6, 1978, 92 Stat. 2923.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-600 added provision relating to deposits by a bank.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 701(cc)(3) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending subsec. (f) of this section and section 7701(a)(36)(B)(ii) of this title] shall apply to documents prepared after December 31, 1976."

§ 6697. Assessable penalties with respect to liability for tax of qualified investment entities

(a) Civil penalty

In addition to any other penalty provided by law, any qualified investment entity (as defined in section 860(b)) whose tax liability for any taxable year is deemed to be increased pursuant to section 860(c)(1)(A) (relating to interest and additions to tax determined with respect to the amount of the deduction for deficiency dividends allowed) shall pay a penalty in an amount equal to the amount of interest (for which such entity is liable) which is attributable solely to such increase.

(b) 50-percent limitation

The penalty payable under this section with respect to any determination shall not exceed one-half of the amount of the deduction allowed by section 860(a) for such taxable year.

(c) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedure for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

(As amended Pub. L. 95-600, title III, § 362(b), Nov. 6, 1978, 92 Stat. 2851.)

AMENDMENTS

1978—Pub. L. 95-600 substituted in catchline "qualified investment entities" for "real estate investment trusts".

Subsec. (a). Pub. L. 95-600 substituted "qualified investment entity (as defined in section 860(b))" for "real estate investment trust", "section 860(c)(1)(A)" for "section 859(b)(2)(A)", and "(for which such entity is liable) which" for "for which such trust is liable that".

Subsec. (b). Pub. L. 95-600 substituted "section 860(a)" for "section 859(a)".

Subsec. (c). Pub. L. 95-600 reenacted subsec. (c) without change.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable with respect to determinations (as defined in section 860(d) of this title) after Nov. 6, 1978, see section 362(e) of Pub. L. 95-600, set out as an Effective Date note under section 860 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 860 of this title.

§ 6698. Failure to file information with respect to carryover basis property

(a) Information required to be furnished to the Secretary

Any executor who fails to furnish information required under subsection (a) of section 6039A on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, shall pay a penalty of $100 for each such failure, but the total amount imposed for all such failures shall not exceed $5,000.

(b) Information required to be furnished to beneficiaries

Any executor who fails to furnish in writing to each person described in subsection (b) of section 6039A the information required under such subsection, unless it is shown that such failure is due to reasonable cause and not to willful neglect, shall pay a penalty of $50 for each such failure, but the total amount imposed for all such failures shall not exceed $2,500.

(c) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

(Added Pub. L. 94-455, title XX, § 2005(d)(2), Oct. 4, 1976, 90 Stat. 1878; § 6694, renumbered and amended Pub. L. 95-600, title VII, § 702(r)(1) (A), (B), Nov. 6, 1978, 92 Stat. 2938.)

CODIFICATION

Section was formerly set out as a second section 6694 of this title.

Another section 6698 is set out below.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600, § 702(r)(1)(B), added subsec. (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(r)(5) of Pub. L. 95-600 provided that: "The amendments made by this subsection [amending sections 1016(a), 2051, 6324B(b), and 6698 of this title] shall apply to estates of decedents dying after December 31, 1976."

§ 6698. Failure to file partnership return

(a) General rule

In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax), if any partnership required to file a return under section 6031 for any taxable year—

(1) fails to file such return at the time prescribed therefor (determined with regard to any extension of time for filing), or

(2) files a return which fails to show the information required under section 6031,

such partnership shall be liable for a penalty determined under subsection (b) for each month (or fraction thereof) during which such failure continues (but not to exceed 5 months), unless it is shown that such failure is due to reasonable cause.

(b) Amount per month

For purposes of subsection (a), the amount determined under this subsection for any month is the product of—

(1) $50, multiplied by

(2) the number of persons who were partners in the partnership during any part of the taxable year

(c) Assessment of penalty

The penalty imposed by subsection (a) shall be assessed against the partnership.

(d) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

(Added Pub. L. 95-600, title II, § 211(a), Nov. 6, 1978, 92 Stat. 2817.)

CODIFICATION

Another section 6698 is set out above.

EFFECTIVE DATE

Section 211(c) of Pub. L. 95-600 provided that: "The amendments made by this section [adding this section] shall apply with respect to returns for taxable years beginning after December 31, 1978."

§ 6699. Assessable penalties relating to ESOP

(a) In general

If a taxpayer who has claimed an ESOP credit for any taxable year—

(1) fails to satisfy any requirement provided by section 409A, or

(2) fails to make any contribution which is required under section 48(n) within the period required for making such contribution,

the taxpayer shall pay a penalty in an amount equal to the amount involved in such failure.

(b) No penalty where there is timely correction of failure

Subsection (a) shall not apply with respect to any failure if the employer corrects such failure (as determined by the Secretary) within 90 days after the Secretary notifies him of such failure.

(c) Amount involved defined

(1) In general

For purposes of this section, the term "amount involved" means an amount determined by the Secretary.

(2) Maximum and minimum amount

The amount determined under paragraph (1)—

(A) shall not exceed the amount determined by multiplying the qualified investment of the employer for the taxable year to which the failure relates by the ESOP percentage claimed by the employer for such year, and

(B) shall not be less than the product of one-half of 1 percent of the amount referred to in subparagraph (A), multiplied by the number of months (or parts thereof) during which such failure continues.

(Added Pub. L. 95-600, title I, § 141(c)(1), Nov. 6, 1978, 92 Stat. 2794.)

EFFECTIVE DATE

Section effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409A of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 409A of this title.

CHAPTER 73—BONDS

§ 7103. Cross references—Other provisions for bonds

(a) Extensions of time

[See main edition for text of (1) to (3)]

(4) For a bond to stay collection of a penalty assessed under section 6672, see section 6672(b).

[See main edition for text of (5); (b) and (c)]

(As amended Nov. 10, 1978, Pub. L. 95-628, § 9(b)(2), 92 Stat. 3633.)

AMENDMENTS

1978—Subsec. (a)(4). Pub. L. 95-628 added par. (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-628 applicable with respect to penalties assessed more than 60 days after Nov. 10, 1978, see section 9(c) of Pub. L. 95-628, set out as an Effective Date of 1978 Amendment note under section 6672 of this title.

CHAPTER 74—CLOSING AGREEMENTS AND COMPROMISES

§ 7121. Closing agreements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 453, 547, 860, 1313, 6013, 7206 of this title.

§ 7122. Compromises

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 63, 453, 1311, 1481, 6013, 6103, 6325, 6511, 6521, 7206, 7809 of this title.

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter A—Crimes

PART I—GENERAL PROVISIONS

§ 7203. Willful failure to file return, supply information, or pay tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5684, 6038, 6686, 6698 of this title; title 18 section 3237.

§ 7210. Failure to obey summons

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(g)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 505(c)(5), 92 Stat. 2760.)

AMENDMENTS

1978—Pub. L. 95-599 substituted "6427(g)(2)" for "6427(f)(2)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as an Effective Date of 1978 Amendments note under section 6427 of this title.

§ 7213. Unauthorized disclosure of information

(a) Returns and return information

(1) Federal employees and other persons

It shall be unlawful for any officer or employee of the United States or any person described in section 6103(n) (or an officer or employee of any such person), or any former officer or employee, willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)). Any violation of this paragraph shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution, and if such offense is committed by any officer or employee of the United States, he shall, in addition to any other punishment, be dismissed from office or discharged from employment upon conviction for such offense.

(2) State and other employees

It shall be unlawful for any officer, employee, or agent, or former officer, employee, or agent, of any State (as defined in section 6103(b)(5)), any local child support enforcement agency, or any educational institution willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (*l*)(6), or (m)(4)(B) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(3) Other persons

It shall be unlawful for any person to whom any return or return information (as defined in section 6103(b)) is disclosed in a manner unauthorized by this title thereafter willfully to print or publish in any manner not provided by law any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(4) Solicitation

It shall be unlawful for any person willfully to offer any item of material value in exchange for any return or return information (as defined in section 6103(b)) and to receive as a result of such solicitation any such return or return information. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

(5) Shareholders

It shall be unlawful for any person to whom a return or return information (as defined in section 6103(b)) is disclosed pursuant to the provisions of section 6103(e)(1)(D)(iii) willfully to disclose such return or return information in any manner not provided by law. Any violation of this paragraph shall be a felony punishable by a fine in any amount not to exceed $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

[*See main edition for text of* (b) *to* (d)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(bb)(1)(C), (6), 92 Stat. 2922, 2923.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-600, § 701(bb)(6)(A), inserted "willfully" preceding "to disclose".

Subsec. (a)(2). Pub. L. 95-600, § 701(bb)(1)(C), (6)(A), added provision relating to educational institutions, inserted "willfully" preceding "to disclose", and substituted "subsection (d), (*l*)(6), or (m)(4)(B) of section 6103" for "section 6103(d) or (*l*)(6)".

Subsec. (a)(3). Pub. L. 95-600, § 701(bb)(6)(B), substituted "thereafter willfully to" for "to thereafter".

Subsec. (a)(4). Pub. L. 95–600, § 701(bb)(6)(C), inserted "willfully" preceding "to offer".

Subsec. (a)(5). Pub. L. 95–600, § 701(bb)(6)(A), inserted "willfully" preceding "to disclose".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 effective Jan. 1, 1977, see section 701(bb)(8) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 6103 of this title.

§ 7217. Civil damages for unauthorized disclosure of returns and return information

[See main edition for text of (a)]

(b) No liability for good faith but erroneous interpretation

No liability shall arise under this section with respect to any disclosure which results from a good faith, but erroneous, interpretation of section 6103.

(c) Damages

In any suit brought under the provisions of subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of—

(1) actual damages sustained by the plaintiff as a result of the unauthorized disclosure of the return or return information and, in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, but in no case shall a plaintiff entitled to recovery receive less than the sum of $1,000 with respect to each instance of such unauthorized disclosure; and

(2) the costs of the action.

(d) Period for bringing action

An action to enforce any liability created under this section may be brought, without regard to the amount in controversy, within 2 years from the date on which the cause of action arises or at any time within 2 years after discovery by the plaintiff of the unauthorized disclosure.

(As amended Pub. L. 95–600, title VII, § 701(bb)(7), Nov. 6, 1978, 92 Stat. 2923.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–600, § 701(bb)(7)(A), (B), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95–600, § 701(bb)(7)(A), redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95–600, § 701(bb)(7)(A), (C), redesignated former subsec. (c) as (d) and, in subsec. (d) as so redesignated, added subsec. catchline.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–600 applicable with respect to disclosures made after Nov. 6, 1978, see section 701(bb)(8) of Pub. L. 95–600, set out as an Effective Date of 1978 Amendment note under section 6103 of this title.

Subchapter C—Forfeitures

PART II—PROVISIONS COMMON TO FORFEITURES

§ 7326. Disposal of forfeited or abandoned property in special cases

REFERENCES IN TEXT

Sections 4461 and 4462, referred to in text, were repealed effective with respect to years beginning after June 30, 1980.

CHAPTER 76—JUDICIAL PROCEEDINGS

Subchapter B—Proceedings by Taxpayers and Third Parties

§ 7421. Prohibition of suits to restrain assessment or collection

(a) Tax

Except as provided in sections 6212(a) and (c), 6213(a), 6672(b), 6694(c), and 7426(a) and (b)(1), and 7429(b), no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

[See main edition for text of (b)]

(As amended Nov. 10, 1978, Pub. L. 95–628, § 9(b)(1), 92 Stat. 3633.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–628 inserted references to sections 6672(b) and 6694(c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–628 applicable with respect to penalties assessed more than 60 days after Nov. 10, 1978, see section 9(c) of Pub. L. 95–628, set out as an Effective Date of 1978 Amendment note under section 6672 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6207, 6213, 6672, 6694, 6904 of this title.

§ 7428. Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.

(a) Creation of remedy

In a case of actual controversy involving—

[See main edition for text of (1) and (2)]

upon the filing of an appropriate pleading, the United States Tax Court, the United States Court of Claims, or the district court of the United States for the District of Columbia may make a declaration with respect to such initial qualification or continuing qualification or with respect to such initial classification or continuing classification. Any such declaration shall have the force and effect of a decision of the Tax Court or a final judgment or decree of the district court or the Court of Claims, as the case may be, and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification or continuing classification includes any revocation of or other change in a qualification or classification.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 95-600, title VII, § 701(dd)(2), Nov. 6, 1978, 92 Stat. 2924.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600 added provision relating to change in qualification or classification.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective as if included in this section at the time section was added to this title, see section 701(dd)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 7476 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7451, 7456, 7459, 7482 of this title; title 28 sections 1507, 2201.

Subchapter C—The Tax Court

PART I—ORGANIZATION AND JURISDICTION

§ 7443. Membership

CERTIFICATE BY JUDGE OF TRAVELING EXPENSES

Repealed by:

Pub. L. 95-429, title IV, § 401, Oct. 10, 1978, 92 Stat. 1013.

Pub. L. 95-81, title IV, § 401, July 31, 1977, 91 Stat. 352.

EX. ORD. NO. 12064. UNITED STATES TAX COURT NOMINATING COMMISSION

Ex. Ord. No. 12064, June 5, 1978, 43 F.R. 24661, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to create in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) an advisory commission on the membership of the United States Tax Court, it is hereby ordered as follows:

1-1 ESTABLISHMENT OF THE COMMISSION

1-101. There is established the United States Tax Court Nominating Commission. The Commission shall be comprised of six members appointed by the President.

1-102. Not more than three members shall be officials of the Federal government. The Federal members shall include the General Counsel of the Department of the Treasury, who shall chair the Commission. The private members shall have special expertise in the field of Federal taxation.

1-2. FUNCTIONS OF THE COMMISSION

1-201. When notified by the President that he desires its assistance in filling a vacancy on the United States Tax Court, the Commission shall conduct inquiries to identify persons who may be qualified to serve in the position and shall conduct further inquiries to determine those persons' qualifications.

1-202. In conducting its inquiries the Commission shall follow any procedures or criteria established by the President in his letter of notification or by the Secretary of the Treasury acting on behalf of the President.

1-203. The Commission shall submit a report to the President and to the Secretary of the Treasury within 60 days from the date it is notified by the President that he desires its assistance. The report shall list the names of no more than five persons whom the Commission considers well qualified to serve in the position.

1-204. The Commission shall conduct such additional inquiries and submit such additional reports as may be requested by the President.

1-205. The Commission shall perform no function except when requested by the President to assist him in filling a vacancy.

1-3. ADMINISTRATIVE PROVISIONS

1-301. The Commission is authorized to request from any Executive agency such information or assistance as the Commission deems necessary to carry out its functions under this Order. Each agency shall, to the extent permitted by law, furnish such information or assistance to the Commission.

1-302. The Commission is authorized to request from any State agency such information and assistance as the Commission deems necessary. It is authorized to obtain such information and assistance to the extent permitted by State law.

1-303. Members of the Commission shall serve without compensation. While engaged in the work of the Commission, members may receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

1-304. The Secretary of the Treasury shall furnish to the Commission necessary administrative support.

1-305. All necessary expenses incurred in connection with the work of the Commission, to the extent permitted by law, shall be paid from funds available to the Secretary of the Treasury.

1-4. GENERAL PROVISIONS

1-401. No member of the Commission shall, while serving on the Commission or for a period of one year thereafter, be eligible to be nominated to fill a position as a judge on the Tax Court.

1-402. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Commission, shall be performed by the Secretary of the Treasury in accordance with the guidelines and procedures established by the Administrator of General Services.

1-403. The Commission shall terminate on December 31, 1978, unless sooner extended.

JIMMY CARTER.

§ 7447. Retirement

[See main edition for text of (a) to (h)]

(i) Revocation of election to receive retired pay

(1) In general

Notwithstanding subsection (e)(2), an individual who has filed an election to receive retired pay under subsection (d) may revoke such election at any time before the first day on which retired pay (or compensation under subsection (c) in lieu of retired pay) would (but for such revocation) begin to accrue with respect to such individual.

(2) Manner of revoking

Any revocation under this subsection shall be made by filing a notice thereof in writing with the Civil Service Commission. The Civil Service Commission shall transmit to the chief judge a copy of each notice filed under this subsection.

(3) Effect of revocation

In the case of any revocation under this subsection—

(A) for purposes of this section, the individual shall be treated as not having filed an election to receive retired pay under subsection (d),

(B) for purposes of section 7448—

(i) the individual shall be treated as not having filed an election under section 7448(b), and

(ii) section 7448(g) shall not apply, and the amount credited to such individual's account (together with interest at 4 percent per annum to December 31, 1947, and 3 percent per annum thereafter, compounded on December 31 of each year to the date on which the revocation is filed) shall be returned to such individual,

(C) no credit shall be allowed for any service as a judge of the Tax Court unless with respect to such service either there has been deducted and withheld the amount required by the civil service retirement laws or there has been deposited in the Civil Service Retirement and Disability Fund an amount equal to the amount so required, with interest,

(D) the Tax Court shall deposit in the Civil Service Retirement and Disability Fund an amount equal to the additional amount it would have contributed to such Fund but for the election under subsection (e), and

(E) if subparagraph (D) is complied with, service on the Tax Court shall be treated as service with respect to which deductions and contributions had been made during the period of service.

(As amended Oct. 17, 1978, Pub. L. 95–472, § 1, 92 Stat. 1332.)

REFERENCES IN TEXT

The civil service retirement laws, referred to in subsecs. (g)(2)(A) and (i)(3)(C), are contained in subchapter III (§ 8331 et seq.) of chapter 83 of Title 5, Government Organization and Employees.

The Civil Service Retirement and Disability Fund, referred to in subsecs. (g)(2)(B) and (i)(3)(C), (D), is provided for in section 8348 of Title 5.

AMENDMENTS

1978—Subsec. (i). Pub. L. 95–472 added subsec. (i).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 2(a) of Pub. L. 95–472, provided that: "The amendment made by the first section of this Act [amending this section] shall apply with respect to revocations made after the date of the enactment of this Act [Oct. 17, 1978]."

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission or the Chairman thereof were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3784, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

REDEPOSITING FUNDS IN CIVIL SERVICE RETIREMENT AND DISABILITY FUND; CREDITABLE SERVICE

Section 2(b) of Pub. L. 95–472, provided that: "Any individual who elects to revoke under section 7447(i) of the Internal Revenue Code of 1954 within one year after the date of enactment of this Act [Oct. 17, 1978] shall be treated as having the requisite current service for purposes of redepositing funds in the Civil Service Retirement and Disability Fund and for purposes of reviving creditable service under subchapter III of chapter 83 of title 5 of the United States Code."

§ 7448. Annuities to surviving spouse and dependent children of judges

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7447 of this title.

PART II—PROCEDURE

Sec.
7463. Disputes involving $5,000 or less.

AMENDMENTS

1978—Pub. L. 95–600, title V, § 502(a)(2)(B), Nov. 6, 1978, 92 Stat. 2879, substituted "$5,000" for "$1,500" in item 7463.

§ 7454. Burden of proof in fraud, foundation manager, and transferee cases

[*See main edition for text of* (a)]

(b) Foundation managers

In any proceeding involving the issue whether a foundation manager (as defined in section 4946(b)) has "knowingly" participated in an act of self-dealing (within the meaning of section 4941), participated in an investment which jeopardizes the carrying out of exempt purposes (within the meaning of section 4944), or agreed to the making of a taxable expenditure (within the meaning of section 4945), or whether the trustee of a trust described in section 502(c)(21)[1] has "knowingly" participated in an act of self-dealing (within the meaning of section 4951) or agreed to the making of a taxable expenditure (within the meaning of section 4952), the burden of proof in respect of such issue shall be upon the Secretary.

[*See main edition for text of* (c)]

(As amended Feb. 10, 1978, Pub. L. 95–227, § 4(d)(7), 92 Stat. 23.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95–227 added provisions relating to trustees of a trust described under section 502(c)(21) of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

§ 7456. Administration of oaths and procurement of testimony

(a) In general

For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge or commissioner of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge or commissioner of the Tax Court may

[1] So in original. Probably should read "501(c)(21)".

examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge or commissioner (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deputy clerk)—

[*See main edition for text of (1) and (2); (b)*]

(c) Commissioners

The chief judge may from time to time appoint commissioners who shall proceed under such rules and regulations as may be promulgated by the Tax Court. Each commissioner shall receive the same compensation and travel and subsistence allowances provided by law for commissioners of the United States Court of Claims. The chief judge may assign proceedings under sections 7428, 7476, 7477, and 7478 to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to such proceedings, subject to such conditions and review as the court may by rule provide.

[*See main edition for text of (d)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 336(b)(1), title V, § 502(c), 92 Stat. 2841, 2879.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 502(c), substituted "any judge or commissioner of the Tax Court" for "any judge of the Tax Court" wherever appearing, and "by the judge or commissioner" for "by the judge" following "and signed".

Subsec. (c). Pub. L. 95-600, § 336(b)(1), added provision that the chief judge may assign proceedings under sections 7428, 7476, 7477, and 7478 to be heard by the commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to such proceedings, subject to such conditions and review as the court may by rule provide.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (c) by section 336(b)(1) of Pub. L. 95-600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95-600, set out as an Effective Date note under section 7478 of this title.

Amendment of subsec. (a) by section 502(c) of Pub. L. 95-600 effective Nov. 6, 1978, see section 502(d)(2) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 7463 of this title.

§ 7463. Disputes involving $5,000 or less

(a) In general

In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) $5,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) $5,000, in the case of the tax imposed by chapter 11, or

(3) $5,000 for any one calendar year, in the case of the tax imposed by chapter 12,

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

[*See main edition for text of (b) to (f)*]

(g) Commissioners

The chief judge of the Tax Court may assign proceedings conducted under this section to be heard by the Commissioners of the court, and the court may authorize a commissioner to make the decision of the court with respect to any such proceeding, subject to such conditions and review as the court may by rule provide.

(As amended Pub. L. 95-600, title V, § 502(a)(1), (2)(A), (b), Nov. 6, 1978, 92 Stat. 2879.)

AMENDMENTS

1978—Pub. L. 95-600, § 502(a)(2)(A), substituted "$5,000" for "$1,500" in section catchline.

Subsec. (a). Pub. L. 95-600, § 502(a)(1), "$5,000 for any one taxable year, in the case of the taxes imposed by subtitle A" for "$1,500 for any one taxable year, in the case of the taxes imposed by subtitle A and chapter 12, or" in par. (1), "$5,000, in the case of the tax imposed by chapter 11, or" for "$1,500 in the case of the tax imposed by chapter 11," in par. (2), and added par. (3).

Subsec. (g). Pub. L. 95-600, § 502(b), added subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 502(d) of Pub. L. 95-600 provided that:

"(1) SUBSECTION (a).—The amendments made by subsection (a) [amending subsecs. (a)(1)-(3) of this section] shall take effect on the first day of the first calendar month beginning more than 180 days after the date of the enactment of this Act [Nov. 6, 1978].

"(2) SUBSECTIONS (b) AND (c).—The amendments made by subsection (b) [adding subsec. (g) of this section] and (c) [amending section 7456(a) of this title] shall take effect on the date of the enactment of this Act."

PART IV—DECLARATORY JUDGMENTS

Sec.
7478. Declaratory judgments relating to status of certain governmental obligations.

AMENDMENTS

1978—Pub. L. 95-600, title III, § 336(c)(2), Nov. 6, 1978, 92 Stat. 2842, added item 7478.

§ 7476. Declaratory judgments relating to qualification of certain retirement plans

(a) Creation of remedy

In a case of actual controversy involving—

[*See main edition for text of (1) and (2)*]

upon the filing of an appropriate pleading, the Tax Court may make a declaration with respect to such initial qualification or continuing qualification. Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such. For purposes of this section, a determination with respect to a continuing qualification includes any revocation of or other change in a qualification.

[See main edition for text of (b)]

(c) Retirement plan

For purposes of this section, the term "retirement plan" means—

(1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan,

(2) an annuity plan described in section 403(a), or

(3) a bond purchase plan described in section 405(a).

(d) Cross reference

For provisions concerning intervention by Pension Benefit Guaranty Corporation and Secretary of Labor in actions brought under this section and right of Pension Benefit Guaranty Corporation to bring action, see section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974.

[(e) redesignated (d)]

(As amended Pub. L. 95-600, title III, § 336(b)(2)(A), title VII, § 701(dd)(1), Nov. 6, 1978, 92 Stat. 2842, 2924.)

REFERENCES IN TEXT

Section 3001(c) of subtitle A of title III of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d), is classified to section 1201(c) of Title 29, Labor.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-600, § 701(dd)(1), added provision relating to revocation of qualification.

Subsec. (c). Pub. L. 95-600, § 336(b)(2)(A), redesignated former subsec. (d) as (c). Former subsec. (c), which authorized the chief judge to assign proceedings under this section or section 7428 to be heard by the commissioners of the court, was struck out.

Subsec. (d). Pub. L. 95-600, § 336(b)(2)(A), redesignated former subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 95-600, § 336(b)(2)(A), redesignated subsec. (e) as (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (c) to (e) by section 336(b)(2)(A) of Pub. L. 95-600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95-600, set out as an Effective Date note under section 7478 of this title.

Section 701(dd)(3) of Pub. L. 95-600 provided that: "The amendments made by paragraphs (1) and (2) [amending sections 7428(a) and 7476(a)] shall take effect as if included in section 7476 or 7428 of the Internal Revenue Code of 1954 (as the case may be) at the respective times such sections were added to such Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7456, 7482 of this title; title 29 section 1201.

§ 7477. Declaratory judgments relating to transfers of property from the United States

[See main edition for text of (a) and (b)]

[(c) Repealed. Pub. L. 95-600, title III, § 336(b)(2)(B), Nov. 6, 1978, 92 Stat. 2842]

(As amended Pub. L. 95-600, title III, § 336(b)(2)(B), Nov. 6, 1978, 92 Stat. 2842.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-600 struck out subsec. (c), which related to the authority of the chief judge to assign proceedings under this section to be heard by the commissioners of the court.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95-600, set out as an Effective Date note under section 7478 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7456, 7482 of this title.

§ 7478. Declaratory judgments relating to status of certain governmental obligations

(a) Creation of remedy

In a case of actual controversy involving—

(1) a determination by the Secretary whether prospective obligations are described in section 103(a), or

(2) a failure by the Secretary to make a determination with respect to any matter referred to in paragraph (1),

upon the filing of an appropriate pleading, the Tax Court may make a declaration whether such prospective obligations are described in section 103(a). Any such declaration shall have the force and effect of a decision of the Tax Court and shall be reviewable as such.

(b) Limitations

(1) Petitioner

A pleading may be filed under this section only by the prospective issuer.

(2) Exhaustion of administrative remedies

The court shall not issue a declaratory judgment or decree under this section in any proceeding unless it determines that the petitioner has exhausted all available administrative remedies within the Internal Revenue Service. A petitioner shall be deemed to have exhausted its administrative remedies with respect to a failure of the Secretary to make a determination with respect to an issue of obligations at the expiration of 180 days after the date on which the request for such determination was made if the petitioner has taken, in a timely manner, all reasonable steps to secure such determination.

(3) Time for bringing action

If the Secretary sends by certified or registered mail notice of his determination as described in subsection (a)(1) to the petitioner, no proceeding may be initiated under this section unless the pleading is filed before the 91st day after the date of such mailing.

(Added Pub. L. 95-600, title III, § 336(a), Nov. 6, 1978, 92 Stat. 2841.)

EFFECTIVE DATE

Section 336(d) of Pub. L. 95-600 provided that: "The amendments made by this section [enacting this section and amending sections 7456(c), 7476(c)-(e), 7477(c) and 7482(b)(1), (3) of this title] shall apply to requests for determinations made after December 31, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7456, 7482 of this title.

Subchapter D—Court Review of Tax Court Decisions

§ 7482. Courts of review

[See main edition for text of (a)]

(b) Venue

(1) In general

Except as otherwise provided in paragraphs (2) and (3), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

[See main edition for text of (A) to (E)]

If for any reason no subparagraph of the preceding sentence applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7428, 7476, or 7477 was filed with the Tax Court.

[See main edition for text of (2)]

(3) Declaratory judgment actions relating to status of certain governmental obligations

In the case of any decision of the Tax Court in a proceeding under section 7478, such decision may only be reviewed by the Court of Appeals for the District of Columbia.

[See main edition for text of (c)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title III, § 336(c)(1), 92 Stat. 2842.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-600, § 336(c)(1)(A), substituted provided in paragraphs (2) and (3)" for "provided in paragraph (2)".

Subsec. (b)(3). Pub. L. 95-600, § 336(c)(1)(B), added subsec. (b)(3).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 applicable to requests for determinations made after Dec. 31, 1978, see section 336(d) of Pub. L. 95-600, set out as an Effective Date note under section 7478 of this title.

CHAPTER 77—MISCELLANEOUS PROVISIONS

§ 7502. Timely mailing treated as timely filing and paying

[See main edition for text of (a) to (d)]

(e) Mailing of deposits

(1) Date of deposit

If any deposit required to be made (pursuant to regulations prescribed by the Secretary under section 6302(c)) on or before a prescribed date is, after such date, delivered by the United States mail to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit, such deposit shall be deemed received by such bank, trust company, domestic building and loan association, or credit union on the date the deposit was mailed.

(2) Mailing requirements

Paragraph (1) shall apply only if the person required to make the deposit establishes that—

[See main edition for text of (A)]

(B) the deposit was, on or before such second day, mailed in the United States in an envelope or other appropriate wrapper, postage prepaid, properly addressed to the bank, trust company, domestic building and loan association, or credit union authorized to receive such deposit.

In applying subsection (c) for purposes of this subsection, the term "payment" includes "deposit", and the reference to the postmark date refers to the date of mailing.

(As amended Oct. 28, 1977, Pub. L. 95-147, § 3(b), 91 Stat. 1228.)

AMENDMENTS

1977—Subsec. (e). Pub. L. 95-147 substituted ", trust company, domestic building and loan association, or credit union" for "or trust company" in three places.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-147 shall apply to amounts deposited after Oct. 28, 1977, see section 3(c) of Pub. L. 95-147, set out as an Effective Date of 1977 Amendment note under section 6302 of this title.

§ 7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 267 of this title.

§ 7510. Exemption from tax of domestic goods purchased for the United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5001, 5002, 5003, 5004, 5005, 5023, 5025, 5174, 5214, 5215 of this title.

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

Subchapter A—Examination and Inspection

§ 7603. Service of summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(g)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 505(c)(5), 92 Stat. 2760.)

AMENDMENTS

1978—Pub. L. 95-599 substituted "6427(g)(2)" for "6427(f)(2)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as an Effective Date of 1978 Amendment note under section 6427 of this title.

§ 7604. Enforcement of summons

[See main edition for text of (a)]

(b) Enforcement

Whenever any person summoned under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(g)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) Cross references

(1) Authority to issue orders, processes, and judgments

For authority of district courts generally to enforce the provisions of this title, see section 7402.

(2) Penalties

For penalties applicable to violation of section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(g)(2), or 7602, see section 7210.

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 505(c)(5), (6), 92 Stat. 2760.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-599, § 505(c)(5), substituted "6427(g)(2)" for "6427(f)(2)".

Subsec. (c)(2). Pub. L. 95-599, § 505(c)(6), substituted "6427(g)(2)" for "6427(e)(2)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as an Effective Date of 1978 Amendments note under section 6427 of this title.

§ 7605. Time and place of examination

(a) Time and place

The time and place of examination pursuant to the provisions of section 6320(e)(2), 6421(f)(2), 6424(d)(2), 6427(g)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 6427(g)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

[See main edition for text of (b) and (c)]

(As amended Nov. 6, 1978, Pub. L. 95-599, title V, § 505(c)(5), 92 Stat. 2760.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-599 substituted "6427(g)(2)" for "6427(f)(2)" in two places.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as an Effective Date of 1978 Amendments note under section 6427 of this title.

§ 7609. Special procedures for third-party summonses

[See main edition for text of (a) and (b)]

(c) Summons to which section applies

(1) In general

Except as provided in paragraph (2), a summons is described in this subsection if it is issued under paragraph (2) of section 7602 or under section 6420(e)(2), 6421(f)(2), 6424(d)(2), or 6427(g)(2) and requires the production of records.

[See main edition for text of (2) and (3); (d) to (h)]

(As amended Pub. L. 95-599, title V, § 505(c)(6), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95-600, title VII, § 703(l)(4), Nov. 6, 1978, 92 Stat. 2943.)

AMENDMENTS

1978—Subsec. (c)(1). Pub. L. 95-600 which purported to substitute "6427(f)(2)" for "6427(e)(2)" was not executed in view of the amendment made by Pub. L. 95-599. See below.

Pub. L. 95-599 substituted "6427(g)(2)" for "6427(e)(2)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective on Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of this title.

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as an Effective Date of 1978 Amendment note under section 6427 of this title.

§ 7610. Fees and costs for witnesses

[See main edition for text of (a) and (b)]

(c) Summons to which section applies

This section applies with respect to any summons authorized under section 6420(e)(2), 6421(f)(2), 6424(d)(2), 6427(g)(2), or 7602.

(As amended Pub. L. 95-599, title V, § 505(c)(6), Nov. 6, 1978, 92 Stat. 2760.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-599 substituted "6427(g)(2)" for "6427(e)(2)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as an Effective Date of 1978 Amendment note under section 6427 of this title.

Subchapter D—Possessions

§ 7651. Administration and collection of taxes in possessions

COMPENSATION TO GUAM AND VIRGIN ISLANDS FOR UNEXPECTED REVENUE LOSSES OCCASIONED BY TAX REDUCTION ACT OF 1975 AND TAX REFORM ACT OF 1976

Pub. L. 95-134, title IV, § 402, Oct. 15, 1977, 91 Stat. 1163, provided that: "In order to compensate the territories of Guam and the Virgin Islands for unexpected revenue losses occasioned by the Tax Reduction Act of 1975 [Pub. L. 94-12, Mar. 29, 1975, 89 Stat. 26, see Tables volume] and the Tax Reform Act of 1976 [Pub. L. 94-455, Oct. 4, 1976, 90 Stat. 1525, see Tables volume] there is hereby authorized to be appropriated to the Secretary for grants to the government of Guam not to exceed $15,000,000 and after October 1, 1977, for grants to the government of the Virgin Islands not to exceed $14,000,000, such sums being in addition to those previously authorized for such purposes."

PAYMENTS TO GOVERNMENT OF AMERICAN SAMOA, GUAM, AND THE VIRGIN ISLANDS

Pub. L. 95-30, title IV, § 407, May 23, 1977, 91 Stat. 156, provided that:

"(a) The Secretary of the Treasury is authorized to make separate payments to the government of American Samoa, the government of Guam, and the government of the Virgin Islands. The payment to the government of a particular possession shall be in an amount equal to the loss to that possession with respect to tax returns for the first taxable year beginning after December 31, 1976, by reason of sections 101 and 102 of this Act [amending sections 1, 3, 21, 42, 57, 63, 143, 161, 172, 211, 402, 441, 443, 511, 584, 613A, 641, 642, 667, 703, 861, 862, 873, 904, 911, 931, 1034, 1211, 1302, 6014, 6212, 6504, and 6654 of this title and repealing sections 36, 141, 142, 144 and 145 of this title]. Such amount shall be determined by the Secretary of the Treasury upon certification to the Secretary by the United States Government Comptrollers for Guam and the Virgin Islands.

"(b) There are hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary to carry out the provisions of this section."

CHAPTER 79—DEFINITIONS

§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

[*See main edition for text of (1) to (35)*]

(36) Income tax return preparer

[*See main edition for text of (A)*]

(B) Exceptions

A person shall not be an "income tax return preparer" merely because such person—

(i) furnishes typing, reproducing, or other mechanical assistance,

(ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii) prepares as a fiduciary a return or claim for refund for any person, or

[*See main edition for text of (iv)*]

(37) Individual retirement plan

The term "individual retirement plan" means—

(A) an individual retirement account described in section 408(a),

(B) an individual retirement annuity described in section 408(b), and

(C) a retirement bond described in section 409.

[*See main edition for text of (b) to (d)*]

(As amended Nov. 6, 1978, Pub. L. 95-600, title I, § 157(k)(2), title VII, § 701(cc)(2), 92 Stat. 2809, 2923.)

REFERENCES IN TEXT

Federal savings and loan association, referred to in subsec. (a)(19), deemed also a reference to Federal mutual savings bank, see section 1462 of Title 12, Banks and Banking.

CODIFICATION

The Interstate Commerce Act, referred to in subsec. (a)(33)(F) to (H) is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended. Parts I and III of the Interstate Commerce Act were classified generally to chapters 1 (§ 1 et seq.) and 12 (§ 901 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. Parts I and III are now covered by subchapters I and III of chapter 105 of Title 49. For complete distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

AMENDMENTS

1978—Subsec. (a)(36)(B)(iii). Pub. L. 95-600, § 701(cc)(2), substituted "prepares as a fiduciary a return or claim for refund for any person, or" for "prepares a return or claim for refund for any trust or estate with respect to which he is a fiduciary, or".

Subsec. (a)(37). Pub. L. 95-600, § 157(k)(2), added subsec. (a)(37).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(37) by section 157(k)(2) of Pub. L. 95-600 applicable to taxable years beginning after Dec. 31, 1974, see section 157(k)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6058 of this title.

Amendment of subsec. (a)(36)(B)(iii) by section 701(cc)(2) of Pub. L. 95-600 applicable to documents prepared after Dec. 31, 1976, see section 701(cc)(3) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 6695 of this title.

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of Title 42, the Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 71, 101, 118, 172, 312, 542, 593, 682, 958, 993, 1246, 1247, 1249, 1313, 1341, 1503, 6038, 6046, 6059, 6694, 7213 of this title; title 22 sections 2314, 2755; title 42 section 410.

CHAPTER 80—GENERAL RULES

Subchapter A—Application of Internal Revenue Laws

§ 7801. Authority of Department of the Treasury

STUDY OF TAX INCENTIVES FOR EXPENDITURES REQUIRED BY OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION AND MINING HEALTH AND SAFETY ADMINISTRATION

Pub. L. 95-600, title V, § 552, Nov. 6, 1978, 92 Stat. 2891, provided that:

"(a) STUDY.—The Secretary of the Treasury shall make a full and complete study and investigation with respect to the appropriateness of providing additional tax incentives for expenditures required by the Occupational Safety and Health Act (OSHA) [section 651 et seq. of Title 29, Labor] and the Mining Safety and Health Administration (MSHA) of the Department of Labor.

"(b) REPORT.—Before April 1, 1979, the Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report of its study and investigation together with its recommendations for legislation."

STUDY OF TAXATION OF NONRESIDENT ALIEN REAL ESTATE TRANSACTIONS IN THE UNITED STATES

Pub. L. 95-600, title V, § 553, Nov. 6, 1978, 92 Stat. 2891, provided that:

"(a) STUDY.—The Secretary of the Treasury shall make a full and complete study and analysis of the appropriate tax treatment to be given to income derived from, or gain realized on, the sale of interests in United States property held by nonresident aliens or foreign corporations.

"(b) REPORT.—The Secretary of the Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a final report of its study, together with its recommendations, no later than 6 months from the date of enactment of this Act [Nov. 6, 1978]."

§ 7803. Other personnel

TAX COUNSELING FOR THE ELDERLY

Pub. L. 95-600, title I, § 163, Nov. 6, 1978, 92 Stat. 2810, provided that:

"(a) TRAINING AND TECHNICAL ASSISTANCE.—

"(1) AGREEMENTS.—The Secretary, through the Internal Revenue Service, is authorized to enter into agreements with private or public nonprofit agencies or organizations for the purpose of providing training and technical assistance to prepare volunteers to provide tax counseling assistance for elderly individuals in the preparation of their Federal income tax returns.

"(2) OTHER ASSISTANCE.—In addition to any other forms of technical assistance provided under this section, the Secretary may provide—

"(A) preferential access to Internal Revenue Service taxpayer service representatives for the purpose of making available technical information needed during the course of the volunteers' work;

"(B) material to be used in making elderly persons aware of the availability of assistance under volunteer taxpayer assistance programs under this section; and

"(C) technical materials and publications to be used by such volunteers.

"(b) POWERS OF THE SECRETARY.—In carrying out his responsibilities under this section, the Secretary is authorized—

"(1) to provide assistance to organizations which demonstrate, to the satisfaction of the Secretary, that their volunteers are adequately trained and competent to render effective tax counseling to the elderly;

"(2) to provide for the training of such volunteers, and to assist in such training, to insure that such volunteers are qualified to provide tax counseling assistance to elderly individuals;

"(3) to provide reimbursement to volunteers through such organizations for transportation, meals, and other expenses incurred by them in training or providing tax counseling assistance under this section, and such other support and assistance as he determines to be appropriate in carrying out the provisions of this section;

"(4) to provide for the use of services, personnel, and facilities of Federal executive agencies and of State and local public agencies with their consent, with or without reimbursement therefor; and

"(5) to prescribe such rules and regulations as he deems necessary to carry out the provisions of this section.

"(c) EMPLOYMENT OF VOLUNTEERS.—

"(1) IN GENERAL.—Service as a volunteer in any program carried out under this section shall not be considered service as an employee of the United States. Volunteers under such a program shall not be considered Federal employees and shall not be subject to the provisions of law relating to Federal employment, except that the provisions of section 1905 of title 18, United States Code, shall apply to volunteers as if they were employees of the United States.

"(2) EXPENSES.—Amounts received by volunteers serving in any program carried out under this section as reimbursement for expenses are exempt from taxation under chapters 1 and 21 of the Internal Revenue Code of 1954.

"(d) PUBLICITY RELATING TO INCOME TAX PROVISIONS PARTICULARLY IMPORTANT TO THE ELDERLY.—The Secretary shall, from time to time, undertake to direct the attention of elderly individuals to those provisions of the Internal Revenue Code of 1954 which are particularly important to taxpayers who are elderly individuals, such as the provisions of section 37 (relating to credit for the elderly) and section 121 (relating to one-time exclusion of gain from sale of principal residence) of the Internal Revenue Code of 1954.

(e) DEFINITIONS.—For purposes of this section—

"(1) The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(2) The term 'elderly individual' means an individual who has attained the age of 60 years as of the close of his taxable year.

"(3) The term 'Federal income tax return' means any return required under chapter 61 of the Internal Revenue Code of 1954 with respect to the tax imposed on an individual under chapter 1 of such Code.

"(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the purpose of carrying out the provisions of this section $2,500,000 for the fiscal year ending September 30, 1979, and $3,500,000 for the fiscal year ending September 30, 1980."